

1 (On the record)

2 HEARING OFFICER DUNN: So we are going to go
3 on the record. First, we're at day 20 of Amazon.com
4 Services, LLC, case 29 RC 288020. The first thing I want
5 to do is admit Board Exhibit 3, which has been uploaded
6 to SharePoint.

7 (Board Exhibit 3 received)

8 It is the Board order dated July 11, 2022.
9 Next, I will ask the Employer, are you ready to call
10 your next witness?

11 MR. LARKIN: Yes, we're ready to call Mr.
12 Connor Spence.

13 HEARING OFFICER DUNN: Okay. And I'm told in
14 off the record discussion that there may be some
15 testimony implicated, relevant or pertaining to
16 Objections for which I have requested offers of proof.
17 Would you like to proceed with that at this time.

18 MR. LARKIN: I would prefer to do it out of
19 the earshot of the witness, though.

20 HEARING OFFICER DUNN: Yes. So if we could
21 have Mr. Spence go to a location other than with Ms.
22 Mirer or in the witness room where he can hear, I would
23 appreciate it. And Ms. Mirer, if you can confirm that
24 that has been done and Mr. Larkin can get started.

25 MR. MILNER: That has been done. He has left

1 my office.

2 HEARING OFFICER DUNN: Perfect. Thank you
3 very much.

4 MS. MIRER: He's Going. Into it, he's
5 heading to the witness room, but not turning on the
6 computer.

7 HEARING OFFICER DUNN: Okay, perfect. Mr.
8 Larkin?

9 MR. MILNER: He's in another room now.

10 MR. LARKIN: Yes. Okay. So I'll begin, I
11 guess, with the Objections on which you have asked for
12 offers of proof on the grounds that the presentation may
13 be cumulative at this point. So with respect to
14 Objection 6 through 8, the Union produced documentation
15 regarding the identity of the ALU's observers. So I
16 would question Mr. Spence about that. I would also
17 question him about some communications from the Union
18 regarding voting times and when employees could vote.
19 There's been testimony about that issue in the case. So
20 I'd ask him some questions about that. So that's 6 to 8.

21 HEARING OFFICER DUNN: Okay. That's
22 permitted.

23 MR. LARKIN: Okay. Objection 15, I would ask
24 him some questions about his own participation in the
25 removal of Amazon campaign materials. And then I would

1 ask him to authenticate some communications relating to
2 the small group meeting testimony that we've heard to
3 this point, including, I think, a couple of new things
4 that we have not introduced with other witnesses to this
5 point.

6 HEARING OFFICER DUNN: Okay. That's also
7 permitted.

8 MR. LARKIN: Okay. Objection 16, there are
9 some social media postings and communications from the
10 ALU that I'd like him to authenticate. Some of which we
11 have discussed with other witnesses, have not introduced
12 into evidence with other witnesses because they couldn't
13 authenticate certain aspects of some of the
14 communications. And so, I wanted to do that with Mr.
15 Spence since he's represented as sort of the ALU's
16 custodian of records for purposes of this case. And so
17 I'd ask him to authenticate certain communications on
18 that basis.

19 HEARING OFFICER DUNN: Okay. I'll give you
20 leeway to do that. And of course, the parties are free
21 to make the objections that they make. If the exhibits
22 have been offered previously. Are any of them rejected
23 already?

24 MR. LARKIN: I don't believe that there are
25 any rejected exhibits.

1 HEARING OFFICER DUNN: So I would request
2 that if you are going to offer any rejected exhibits,
3 please tell me that off the bat.

4 MR. LARKIN: I'm just looking through my
5 list right now just to.

6 MR. MILNER: Mr. Larkin, I did not get that
7 in e-mail this morning with exhibits and the usual daily
8 e-mail.

9 MR. LARKIN: Oh, that should be up or going
10 up as we speak. So can you take another look? And if
11 it's not there, we can wait to begin until that, but it
12 should be up.

13 MR. MILNER: Let me see. I don't have an
14 e-mail, but I'll try yesterday's link and see if that
15 works.

16 HEARING OFFICER DUNN: That works, Mr.
17 Milner.

18 MR. MILNER: Okay. All right, yeah,
19 yesterday's link seems to get me to today's exhibits,
20 but the folder's empty.

21 MR. LARKIN: Okay. So with respect to 16,
22 I'm not certain whether we tried to offer Employer 368
23 before, so I called that one out as one that I was going
24 to ask him about. I don't have a listing that we either
25 did or didn't offer it yet, but for some reason, I sort

1 of have it in my mind that maybe it came up.

2 HEARING OFFICER DUNN: Okay,.

3 MR. LARKIN: So just sort of noting that as
4 one that I was going to ask him about.

5 HEARING OFFICER DUNN: All right. That's
6 fine.

7 MR. LARKIN: Okay. So then with respect to
8 Objections where -- so I guess those are the cumulative
9 ones. With respect to the remainder on Objection 20, Mr.
10 Spence produced some videos of the light projections
11 that I gather are his. So I would ask him about those,
12 and then I would ask him, again, to authenticate some
13 ALU social media related to that event.

14 HEARING OFFICER DUNN: Okay. That should be
15 fine, but just as a caveat, let's not go into the method
16 of how the projection is done. Let's focus on the first
17 hand observation of Mr. Spence.

18 MR. LARKIN: Okay. Let's see. With respect
19 to Objection 17, I would ask him about some text
20 messages that we contend the Union sent to eligible
21 voters, and the text messages asked voters how they
22 intend to vote. So we believe that they are sort of
23 supportive of the allegations in 17, so I would ask him
24 to authenticate those, and I may ask some related
25 questions about who wrote -- who created them, and the

1 extent of the distribution of those messages to the
2 bargaining unit.

3 HEARING OFFICER DUNN: Okay.

4 MR. LARKIN: All right. Let's see. On
5 Objection 18, the Union issued some communications, some
6 campaign communications, flyers and things that Mr.
7 Spence -- some of which he produced, I think some of
8 which we may already have had, and so I would ask him to
9 authenticate those.

10 MR. MILNER: Mr. Larkin, I don't want to
11 interrupt you, but that folder for today is still empty
12 there's no exhibits in it.

13 HEARING OFFICER DUNN: In Egnyte?

14 MR. MILNER: Right.

15 MR. LARKIN: Okay. I'm almost done with my
16 offers of proof.

17 MR. MILNER: I didn't know if you had someone
18 else working on it. I just didn't want you to --

19 MR. LARKIN: Should be. I'm checking now.
20 Yeah, it should be going up.

21 MR. MILNER: Okay.

22 MR. LARKIN: Okay. So yeah, I was on 18. So
23 I would ask Mr. Spence about some flyers that were
24 produced. I relate to the allegations in Objection 18.

25 HEARING OFFICER DUNN: Okay.

1 MR. LARKIN: With respect to Objections 3 to
2 5, I have questions for Mr. Spence regarding any
3 conversations that he had between and among himself and
4 the other officers of the ALU regarding the ALU's
5 petition and card submission, any efforts the Union made
6 to continue to submit authorization cards after December
7 22nd of 2021. Conversations that the officers of the
8 Union may have had regarding the level of interest that
9 they believe that they had, and also some
10 communications, external communications, by the Union
11 regarding that subject -- those subjects.

12 HEARING OFFICER DUNN: So I am not going to
13 permit that line of questioning with respect to
14 Objections 3 through 5, as the showing of interest is a
15 purely administrative manner, not subject to Board
16 litigation. If you have particular exhibits that you
17 would like to show, I'm willing to look at them and
18 allow the parties to weigh in at this time.

19 MR. LARKIN: Sure. Well, before I do, have
20 the documents loaded?

21 MR. MILNER: Let me take a look.

22 MS. FRIEDHEIM-WEIS: They just did.

23 MR. LARKIN: They should be.

24 MR. MILNER: Yes. They're here now.

25 MR. LARKIN: Okay. So I think the first one

1 that we would offer is 176. So Molly, can we bring that
2 one up? So 176 is a newsletter submitted by the Union --
3 or it's the ALU newsletter. This one was published on
4 January 26th -- I'm sorry, January 25, 2022. It's the
5 day before the Region 29 indicated to the parties that
6 the Union's petition was supported by a sufficient
7 showing of interest. On page -- I think -- not this
8 page, but the next one, maybe? Or the one after. The one
9 after. Page 3. Sorry. Page 4. Keep going. Yeah, right
10 there. And it's a little bit obscured. I'm not sure why
11 it printed that way, but it's the paragraph of text that
12 says, "although nearly 2000 Amazon workers are on leave
13 in Staten Island due to the pandemic, we also continue
14 to set up in front of JFK8 and gather signatures from
15 the workers every day as the election hearing deadline
16 approaches." And we would offer that as an admission
17 from the Union regarding their card collecting efforts
18 and that that supports Objection 4.

19 HEARING OFFICER DUNN: Mr. Milner?

20 MR. MILNER: Your Honor, this exhibit is
21 completely irrelevant. Whether or not they collected
22 signatures after they submitted the petition is
23 irrelevant to whether or not the showing of interest
24 determination was sufficient. It is purely an
25 administrative manner and it is non-litigable under any

1 circumstances. I should also point out, just because the
2 table was set up in front of JFK8, as Amazon well knows,
3 there was other organizing drives going on in the other
4 buildings at the same facility. So it's not even
5 necessarily just JFK8 that cards were being signed for.

6 HEARING OFFICER DUNN: Ms. Weis.

7 MS. FRIEDHEIM- WEIS: I echo what Mr. Milner
8 said. And as I've said several times before, and Madam
9 Hearing Officer has ruled several times before, the
10 showing of interest is purely administrative, controlled
11 by the Region, not by who's soliciting for whatever
12 signatures they may be soliciting for. The words
13 themselves that Mr. Larkin refers to, as Mr. Milner
14 pointed out, are vague. We have no idea what signatures
15 are being discussed in this article, but most
16 importantly, the showing of interest is determined by
17 the Region, not by anyone else, and it's not litigable.

18 HEARING OFFICER DUNN: I find employers 176
19 to be irrelevant on the grounds that the showing of
20 interest is a purely administrative matter, not subject
21 to any litigation. Also, I find that many pages of this
22 document are difficult to read and are not even
23 applicable to this particular petition at JFK8. And
24 therefore, I reject Employer 176.

25 MR. LARKIN: Ask that 176 be placed in the

1 rejected Exhibits file.

2 HEARING OFFICER DUNN: That's granted.
3 (Employer's Exhibit 176 received in rejected exhibits
4 file)

5 MR. LARKIN: All right. We can take that
6 off. And then Exhibit 2919. 2919 is a communication by
7 the ALU that was disseminated among the bargaining unit
8 after the NLRB indicated -- or specifically Region 9 of
9 the NLRB indicated on January 26 of 2022 that the
10 petition would be allowed to proceed. As we indicated in
11 our Objections, the handling of the petition by the
12 region lent an air of legitimacy to the ALU and its
13 campaign that, had the Region process the petition in
14 accordance with its rules, wouldn't have happened. So I
15 would question Mr. Spence about this document and offer
16 it in support of Objection 3 and 4.

17 HEARING OFFICER DUNN: Mr. Larkin, just to
18 clarify the record, you said Region 9, I think you meant
19 Region 29.

20 MR. LARKIN: Yes, I did. Thank you.

21 HEARING OFFICER DUNN: No problem. Mr.
22 Milner?

23 MR. MILNER: Frankly, your Honor, even if
24 what Mr. Larkin said was true, which we deny, I'm not
25 sure how this pamphlet or flyer would go towards proving

1 that in any way, shape, or form. This is -- simply just
2 seems to be a statement of fact and nothing more. It is
3 wholly irrelevant, and it relates to a non-litigable
4 matter and should also be excluded on that basis.

5 HEARING OFFICER DUNN: Ms. Weis?

6 MS. FRIEDHEIM- WEIS: Showing of interest is
7 a purely administrative matter, and it's not litigable.

8 HEARING OFFICER DUNN: Okay. So I'm going
9 to grant both Mr. Milner and Ms. Weis standing
10 objections on the basis of showing of interest is non
11 litigable, purely administrative matter, and objecting
12 to any documents on that basis as irrelevant. With
13 respect to 2919, I make the same ruling that 2919 is
14 irrelevant to Objections 3 and 4, on the same basis that
15 showing of interest is non-litigable.

16 MR. LARKIN: Okay. We would ask that 2919 be
17 placed in the rejected exhibits file.

18 HEARING OFFICER DUNN: That's granted.
19 (Employer's Exhibit 2919 received in rejected exhibits
20 file)

21 MR. LARKIN: And I believe that is
22 everything in terms of proffer.

23 HEARING OFFICER DUNN: Okay. Fantastic. Ms.
24 Mirer, if the witness is ready to go into the witness
25 room. That would be great.

1 MS. MIRER: I'll tell him.

2 HEARING OFFICER DUNN: Thank you.

3 MR. MILNER: Mr. Spence is just in the
4 restroom. I just need a couple minutes.

5 HEARING OFFICER DUNN: No problem. Let's
6 briefly go off the record.

7 (Off the record)

8 (On the record).

9 HEARING OFFICER DUNN: Let's go back on the
10 record, Mr. Larkin. Go ahead.

11 MR. LARKIN: Yeah. I'm sorry. Just before I
12 do, I just point out I noticed there's someone in the
13 chat with the name of D Smalls. I just wanted to
14 identify who that was.

15 HEARING OFFICER DUNN: Okay. Let's do that
16 briefly, off the record.

17 (Off the record)

18 (On the record)

19 HEARING OFFICER DUNN: All right. Go ahead,
20 Mr. Larkin, and let's restart with your proffer.

21 MR. LARKIN: Yes. So I had one other proffer
22 to make On Objection 21. I would ask Mr. Spence in his
23 capacity as the ALU's custodian of records about filings
24 made by the ALU with the Department of Labor during the
25 critical period.

1 HEARING OFFICER DUNN: Okay. And I would
2 also reject that testimony on the basis that LMRDA is
3 not properly before the Board and is not something that
4 I'm going to receive evidence for purposes of this
5 hearing.

6 MR. LARKIN: On that basis, I would proffer
7 that the ALU did not make any filings with the US
8 Department of Labor during the critical period. We would
9 offer 726. Molly, do you have that? 726 is the Amazon
10 Labor Union's Form LM1 filed with the Department of
11 Labor, signed by Mr. Spence as the Secretary Treasurer
12 of the Union, and it was submitted to the Department of
13 Labor after the critical period. Again, our contention
14 and Objection 21, not so much that the ALU violated the
15 LMRDA, so much as it is that the ALU's failure to file
16 forms required of a labor organization under the LMRDA
17 deprived employees of access to information about the
18 Union's operations, finances, and dues structure during
19 the critical period.

20 HEARING OFFICER DUNN: Mr. Milner.

21 MR. MILNER: Hearing Officer Dunn, as we've
22 argued on multiple occasions, the NLRB is not the
23 appropriate forum to litigate issues related to the
24 LMRDA. And Amazon's attempt to cast this as anything
25 else is just a backwards way of trying to get the same

1 evidence into the record. Whether or not they filed the
2 LMRDA is simply not relevant to an objections
3 proceeding.

4 HEARING OFFICER DUNN: Ms. Milner -- I'm
5 sorry, Ms. Weis?

6 MS. FRIEDHEIM- WEIS: The Rd rep takes no
7 position regarding the filing of an LM1.

8 HEARING OFFICER DUNN: Okay. So I find
9 Employer 726 to be irrelevant. As I've stated already,
10 that the NLRB is not the appropriate forum for any
11 issues pertaining to the LMRDA.

12 MR. MILNER: Your Honor, I just want to put
13 on the record Angelika Maldonado, I believe, is now
14 logged in as our alternate observer.

15 HEARING OFFICER DUNN: Thank you.

16 MR. LARKIN: So I'd request that Exhibit 726
17 be placed in the rejected exhibits file.

18 HEARING OFFICER DUNN: That's granted.
19 (Employer's Exhibit 726 received in rejected exhibits
20 file)

21 MR. LARKIN: All right. Let me see.

22 MR. MILNER: Also, it's too late now, but I
23 just realized at the last second there was phone numbers
24 listed on that LM form. So just -- to do that, Can we be
25 careful? We're going to post those publicly.

1 HEARING OFFICER DUNN: Yes. Mr. Larkin, to
2 the extent that there are telephone numbers even for the
3 rejected exhibit file, please redact any addresses,
4 telephone numbers, identifiable information on any
5 exhibits that you're going to put into the record,
6 including the rejected exhibits file.

7 MR. LARKIN: All right.

8 HEARING OFFICER DUNN: Thank you.

9 MR. LARKIN: Just making a note. I would
10 just then offer 727 as well. Do you have it, Molly? It's
11 an updated version of the ALU's constitution and bylaws.
12 The original version, which is Exhibit 298, is already
13 admitted in the record. This version of the constitution
14 and bylaws, I believe, was attached to the Union's. LM
15 one filing Employers Exhibit 726, so we would offer it
16 as an attachment to 726.

17 HEARING OFFICER DUNN: Do you know, Mr.
18 Larkin -- you said it was attached to the 726. As I read
19 the last exhibit, 726, I believe it was dated of June in
20 '22. Do you know what period this constitution and
21 bylaws was in effect At 727.

22 MR. LARKIN: Well, I do not. I was going to
23 question Mr. Spence about when 727 came into effect.

24 HEARING OFFICER DUNN: And is it different?
25 I forget the exhibit number, Mr. Larkin. Of the

1 constitution and by law, that's already in. Is it
2 somehow different or does it appear to be identical? Do
3 you know Mr. Larkin?

4 MR. LARKIN: There are some differences
5 between the two. There were some changes made. Renaming
6 of certain things, removal of certain rules, addition of
7 certain rules.

8 HEARING OFFICER DUNN: Okay. Mr. Milner?

9 MR. MILNER: Well, I mean, he should
10 probably question the witness about it before he offers
11 it, and then I'll reserve my objections for that time.

12 HEARING OFFICER DUNN: Okay.

13 MR. MILNER: But I don't think it's going to
14 be relevant. But we'll wait to hear what the witness
15 says.

16 HEARING OFFICER DUNN: That's my inclination
17 as well, Ms. Weis.

18 MS. FRIEDHEIM- WEIS: I have no problem with
19 that because I have no idea what the date is. If it's
20 beyond the critical period, I would object because it's
21 beyond the date of the critical period, but without
22 knowing what the witness is going to say, it's hard to
23 tell.

24 HEARING OFFICER DUNN: Yes. You're
25 permitted to question the witness on this, Mr. Larkin.

1 MR. LARKIN: Okay. We can take that down.

2 So I think that is now everything.

3 HEARING OFFICER DUNN: Okay. And it's okay
4 if it's not. If something comes up and you realize that
5 at the time, I've been in your shoes, so I'll give you
6 some leeway because I recognize that that's not an easy
7 position to be in. So we can bring the witness back
8 in -- Oh, Ms. Weis?

9 MS. FRIEDHEIM- WEIS: Before we make Mr.
10 Spence come in, can we just take two minutes for a
11 restroom break before we get rolling?

12 HEARING OFFICER DUNN: Sure. Off the record.
13 Two minutes.

14 (Off the record)

15 (On the record).

16 HEARING OFFICER DUNN: Let's go back on the
17 record. Mr. Larkin, just so we make sure we have it on
18 the record, could the Employer indicate who it intends
19 to cause its next witness.

20 MR. LARKIN: Yes. We will call Connor
21 Spence.

22 HEARING OFFICER DUNN: Great. Hello, Mr.
23 Spence.

24 MR. SPENCE: Morning.

25 HEARING OFFICER DUNN: You already know that

1 I am the Hearing Officer in this matter. Would you
2 please raise your right hand for me?

3 (CONNOR SPENCE, after first being duly
4 sworn, was examined and testified as follows...)

5 HEARING OFFICER DUNN: All right. Go ahead
6 and put your hand down. And do you have any materials
7 with you? Such as any documents or cell phone, anything
8 like that?

9 THE WITNESS: No.

10 HEARING OFFICER DUNN: Okay. And is anyone
11 present with you in that room?

12 THE WITNESS: No.

13 HEARING OFFICER DUNN: All right. And I will
14 turn it over to Mr. Larkin. Go ahead.

15 DIRECT EXAMINATION BY MR. LARKIN: ^ questioning begins

16 Q. Thank you. Good morning, Mr. Spence.

17 A. Good morning.

18 Q. Mr. Spence, who is your Employer?

19 A. Amazon.

20 Q. And where in Amazon do you work at?

21 A. JFK8 in Staten Island.

22 Q. Okay. And how long have you been employed there?

23 A. Since May of 2021, and I've been employed at
24 other Amazon warehouses in the past.

25 Q. Okay. When did you start your employment with

1 Amazon?

2 A. In, I believe, August of 2017.

3 Q. Okay. And where did you start? What facility did
4 you begin working at Amazon?

5 A. A building called EWR4 in Robinsville, New
6 Jersey.

7 Q. How long were you there?

8 A. Between 2017 and the end of 2019 is when I left.

9 Q. Okay. And then when you left EWR4 at the end of
10 2019, where did you go?

11 A. I had a different job.

12 Q. I see. So you left Amazon altogether?

13 A. Yeah.

14 Q. And at some point, did you return to employment
15 with Amazon?

16 A. Yes.

17 Q. Was that in May of '21?

18 A. Yes.

19 Q. Got it. And have you worked at JFK8 continuously
20 since May of '21?

21 A. Yes.

22 Q. And what is your position at JFK8?

23 A. I'm a tier one associate.

24 Q. And what's your work shift?

25 A. Sunday to Wednesday, 7:15 am. To 5:45 p.m.

1 Sometimes called front half.

2 Q. Okay. So you're front half days?

3 A. Yes.

4 Q. All right. And have you held that shift the
5 entire time you've been at JFK8?

6 A. Yes.

7 Q. All right. So Mr. Spence, we're going to be
8 obviously talking today about the ALU election, the
9 petition filed in the case. And I know you've been
10 present for a lot of this, but just to, sort of,
11 establish kind of the same definitions and ground rules,
12 et cetera, as we talk today, if I refer to the ALU or
13 the Union, when I say that, I mean the Amazon Labor
14 Union, okay? And I might ask you questions about time
15 periods that things happened. And as with some of our
16 prior witnesses when I used the word -- the term
17 campaign period, what I mean is from the day the Union
18 filed a petition on December 22nd of 2021 until the last
19 day of the election, March 30th of 2022. All right?

20 A. Okay.

21 Q. And I may ask you about things that pertain to a
22 different time period, but if I do, I will be clear
23 about that in the question. And if I'm not, please let
24 me know. As you've seen as we've gone through this,
25 sometimes I need to ask better questions. So Mr. Spence,

1 during the campaign period, what, if any, position did
2 you hold with the Amazon Labor Union?

3 A. During the critical period I was the vice
4 president of membership.

5 Q. Okay. And also, just again, so the record is
6 clear when you say the critical period or if I say the
7 critical period --

8 A. I mean December 22nd to March 30th.

9 Q. Okay. So we can use critical period and campaign
10 period interchangeably, and we'll know what we're
11 talking about.

12 A. Yeah. Sorry about that.

13 Q. That's fine. Okay. So you were the vice
14 president of membership during the critical period. Did
15 you hold that position for the entire critical period?

16 A. Yes.

17 Q. All right. And what were your responsibilities in
18 that position?

19 A. So the way we've outlined that role in our
20 constitution, our Union makes a distinction between
21 internal organizing and external organizing. Internal
22 organizing is organizing the membership that already
23 exists within the Union, and external organizing is
24 organizing the unorganized people out there in the
25 world. However, at that point, because JFK8 was our

1 first campaign, it was essentially a role that was
2 overseeing all of our organizing activities, for the
3 most part, which is a role that I shared with other
4 officers in the Union.

5 Q. Okay. And when did you assume that position?

6 A. In October of 2021.

7 Q. And do you continue to serve in that position?

8 A. No. We've since changed some of our leadership
9 roles. I currently serve as the secretary treasurer.

10 Q. When did you stop serving as vice president of
11 membership?

12 A. It was after the campaign period.

13 Q. Of course you've been serving also as the ALU's
14 party representative during this case, is that correct?

15 A. Yes.

16 Q. All right. Before I, sort of, get into asking you
17 about documents and things -- and you've seen how we've
18 done that, so we'll do it the same way. I'll put a
19 document on the screen. I'll ask you to look at it and
20 see if you recognize it, and if you do, we might talk
21 about it. But before I do that, Mr. Spence, did you
22 receive a subpoena to produce documents in this case?

23 A. Yes.

24 Q. And you did, pursuant to that subpoena, provide
25 some documents, is that right?

1 A. Yes.

2 Q. And can you tell us what you did to search for
3 responsive documents?

4 A. So depending on the request, if it was something
5 like our constitution and bylaws if I had that, I
6 provided it. If it was asking me to search for things
7 like documents or communications, I looked on my
8 devices, and I used the search function on each of my
9 devices to look for keywords related to whatever was in
10 the subpoena.

11 Q. And do you know when you began your search for
12 responsive documents?

13 A. Over the course of the last few weeks.

14 Q. Did you talk to anyone else about what to search
15 for or what you were searching for?

16 MR. MILNER: Objection to anything that goes
17 to privilege.

18 HEARING OFFICER DUNN: Yes. Mr. Spence,
19 please don't reveal any legal advice given by the ALU
20 attorneys to you.

21 BY MR. LARKIN:

22 Q. Yeah. Actually, let me back up and outline that
23 so we don't go there. Mr. Spence, are you represented by
24 any of the ALU's attorneys for purposes of this hearing?

25 A. Yes.

1 Q. And which ones?

2 A. Jeanne Mirer, Eric Milner, Retu Singla.

3 Q. Okay.

4 A. And Seth Goldstein. I don't know if he's on the
5 call as well.

6 Q. Okay. Now, do they represent you in your
7 individual capacity or in your capacity as an ALU
8 officer?

9 A. My capacity as an officer.

10 Q. Now, in searching for documents to produce in
11 response to the subpoena, did you talk with anybody
12 besides your lawyers?

13 A. No.

14 Q. Now, we've been, sort of, talking about a
15 subpoena that was directed to you individually, but
16 you're also aware that there is a subpoena directed to
17 the Amazon Labor Union's custodian of records, correct?

18 A. Yes.

19 Q. And that is you?

20 A. For the most part. A lot of the requests on the
21 custodian of records subpoena was covered by a lot of
22 the other subpoenas that were sent out. So I just gave
23 what I had from that subpoena.

24 Q. Is there anybody besides you who would be in
25 possession of records that you would consider records of

1 the Amazon Labor Union?

2 A. No. Like I said, if there was something on the
3 custodian records subpoena that I didn't have, it's
4 likely on someone else's subpoena.

5 Q. Does the ALU have -- trying to word this
6 correctly -- but any sort of organizational
7 communication channels. So for instance, if you have an
8 e-mail address as an employee of Amazon or any company
9 that is not your personal e-mail address, but it's your
10 work e-mail address, does the ALU have any sort of
11 communication or e-mail communication system like that?

12 MR. MILNER: I object. I don't know what the
13 relevance is whether or not the Amazon Labor Union has
14 e-mailed.

15 HEARING OFFICER DUNN: Mr. Larkin, where are
16 we going?

17 MR. LARKIN: Well, it goes to subpoena and
18 the efforts made to comply.

19 MR. MILNER: Well, I mean, you can ask him
20 if he searched e-mail. I don't know why it's relevant,
21 what e-mail he may or may not have.

22 HEARING OFFICER DUNN: Mr. Larkin are you
23 asking if he has ALU e-mail? Is that what you're asking?

24 MR. LARKIN: Yeah.

25 HEARING OFFICER DUNN: Mr. Spence.

1 BY MR. LARKIN:

2 A. Yes.

3 Q. So was your answer to my question, yes?

4 A. It was the answer to the question, do I have an
5 ALU e-mail, yes.

6 Q. Okay. And is that something that you searched
7 for communications relevant to the subpoena?

8 A. Yes.

9 Q. And you found none?

10 A. I didn't find anything that wasn't protected by
11 Section 7.

12 Q. What does that mean?

13 A. Essentially communications with coworkers that
14 would have revealed their Union sentiment, organizing
15 activities. There was nothing there that was responsive
16 to the request in the subpoena.

17 Q. Just to make sure I understand, so are you saying
18 that there were communications that were otherwise
19 responsive but that reflected Section 7 activity, or
20 that there were communications that reflected Section 7
21 activity but were not otherwise responsive?

22 MR. MILNER: Well, I'm going to object to
23 that question because it doesn't make sense. If it
24 reveals Section 7 activity, then it was excluded by the
25 request and therefore it is not responsive. So the

1 question itself doesn't really have an answer. It
2 doesn't make sense.

3 HEARING OFFICER DUNN: Mr. Larkin, can you
4 rephrase the question?

5 BY MR. LARKIN:

6 Q. Yeah, I was not trying to ask it in a confusing
7 way, but I know sometimes I do. I guess -- Mr. Spence,
8 I was just trying to understand your answer, and you had
9 said there were e-mails on your ALU e-mail account that
10 you found, but that they reflected Section 7 activity.
11 So I guess the better way to ask the question is, were
12 any of those e-mails otherwise responsive to anything in
13 the subpoena?

14 A. I think a better answer for me is that I searched
15 my e-mails for things that were responsive to the
16 subpoena, but I excluded even really looking at things
17 that were covered by Section 7 and I just looked at what
18 I had and there was nothing there that ended up being
19 responsive for the subpoena.

20 Q. Okay. I understand now. Did the ALU communicate
21 by Telegram during the campaign period?

22 A. Yes.

23 Q. And is that something that you still have access
24 to?

25 A. No.

1 Q. Tell me a little bit about how access to Telegram
2 works?

3 MR. MILNER: Objection. To the extent the
4 witness knows, obviously.

5 HEARING OFFICER DUNN: Yes. And I was going
6 to tell you, Mr. Spence, no one expects you to be an
7 expert on Telegram, so just testify based on your own
8 personal knowledge.

9 BY MR. LARKIN:

10 A. Yeah. Okay. So to answer the question, Telegram
11 is a group messaging app that you could use on a mobile
12 phone, and it was something that we use to communicate
13 throughout the campaign.

14 Q. And when you say you no longer have access to it,
15 why is that?

16 A. It was deleted after the campaign.

17 Q. Do you recall -- well, when you say "it" -- when
18 you say "it," do you mean what do you mean by "it?"

19 A. Sorry. The group channel in Telegram that we were
20 using to communicate through was deleted.

21 Q. Okay. Do you remember when?

22 A. It was shortly after the campaign ended.
23 Sometime in early April.

24 Q. April of 2022?

25 A. Yes.

1 Q. Do you know who deleted the channel?

2 MR. MILNER: Objection. It's irrelevant.

3 HEARING OFFICER DUNN: Yeah. Mr. Larkin, I
4 don't think that's relevant.

5 BY MR. LARKIN:

6 Q. Okay. So after the deletion of the Telegram
7 channel, I guess, is it your testimony that no one has
8 access to any of the communications that had taken place
9 prior to the time that the channel was deleted?

10 A. Yeah. So one of the features of Telegram that
11 makes it a secure communications app is that once
12 messages are deleted by one party, they're deleted by
13 everybody -- for everybody.

14 Q. In responding, Mr. Spence, to the subpoena to you
15 personally and then in gathering communications to
16 respond to the subpoena to the Amazon Labor Union, did
17 you delete any communications that would have been
18 relevant to the requests after you received the
19 subpoena?

20 A. I don't recall what was in the Telegram.

21 Q. Well, this is not so much the Telegram because I
22 know you said that the Telegram was -- the whole thing
23 was deleted in April of '22. I'm speaking, sort of,
24 universally about communications that may have been in
25 your possession or the Union's possession that would

1 have been relevant to the subpoenas?

2 A. To my knowledge, I hadn't deleted anything else.
3 Whatever was responsive, is what I gave over.

4 Q. Okay. And then, just one other question on the
5 ALU e-mail. If you know, is there a standard retention
6 rule in place for your ALU e-mail? So as an example,
7 some employers have a limit on what can be in your
8 inbox, and after a certain amount of time, things are
9 automatically deleted whether you manually delete them
10 or not. So the question is, does the ALU's e-mail system
11 have any sort of rules in place like that that address
12 the retention of communications?

13 A. Not as far as I know.

14 Q. Did the Union communicate during the campaign
15 period by Slack?

16 A. Yes.

17 Q. And do you still have access to those
18 communications?

19 A. Yes.

20 Q. Did you search those in your search for
21 responsive material?

22 A. Yes. During the critical period, there was
23 nothing responsive in the Slack. Because at that time, we
24 were mainly using the Telegram.

25 Q. I see. So Slack is something that you've used

1 more frequently after the campaign period?

2 A. Yes.

3 Q. All right. Okay. I want to ask you a couple of
4 questions about some of the Union's governing documents.
5 So let me start by putting up Exhibit 298. So Mr.
6 Spence, this document that's already admitted in
7 evidence, it's Employer 298, and I'll represent it, it's
8 a 27-page document that's the ALU's Constitution and
9 bylaws as of 2021, do you recognize Exhibit 298?

10 A. I recognize the first page.

11 Q. Okay. Well, let me ask you this, and if we need
12 to, sort of, scroll through this, we're happy to do it
13 so that you can take a look at it. Generally, when did
14 the ALU adopt its constitution and bylaws?

15 MR. MILNER: Objection. What's the relevance
16 of when they adopted their constitution and bylaws? Are
17 we just talking about the critical period here.

18 MR. LARKIN: Well, what I'm trying to get to
19 is what we talked about before Mr. Spence came into the
20 room with respect to Exhibit 727. And so I just want to
21 establish the time period that the 298 was adopted and
22 in place.

23 HEARING OFFICER DUNN: I'll give you some
24 leeway. Go ahead.

25 BY MR. LARKIN:

1 Q. Yeah. So Mr. Spence, the question was, when did
2 the ALU adopt its constitution and bylaws?

3 A. In October of 2021 it was ratified.

4 Q. Okay. And after the ALU adopted its constitution
5 -- or ratified its constitution and bylaws, in October
6 of '21, did it publish any amendments or changes to the
7 constitution at any point after that?

8 A. It was revised on one or more occasions. I don't
9 recall how many times. But there were revisions after
10 its initial ratification.

11 Q. Okay. And you don't recall how many revisions?

12 A. No.

13 Q. Were any of those revisions during the campaign
14 period?

15 A. I don't believe so.

16 Q. Okay. Now, Mr. Spence, you recall making a filing
17 with the Department of Labor late last month where you
18 filed an LM1 on behalf of the ALU?

19 MR. MILNER: Objection.

20 HEARING OFFICER DUNN: I think the next
21 question is going to be about what was attached to it.
22 Is that correct, Mr. Larkin?

23 MR. LARKIN: Yes.

24 HEARING OFFICER DUNN: Okay. So I'll permit
25 you to ask your next question.

1 BY MR. LARKIN:

2 Q. Yeah. And did you attach a copy of the ALU's
3 CONSTITUTION to your LM1 filing?

4 A. Yes.

5 Q. Okay. And my question to you is, when did the
6 version of the constitution that you attached to the
7 ALU's LM1 filing get adopted by the Union?

8 A. After the campaign period.

9 Q. All right. We can take that down, Molly?

10 HEARING OFFICER DUNN: Can I ask a question,
11 please?

12 MR. LARKIN: Sure.

13 HEARING OFFICER DUNN: Could you put it back
14 up, please, Ms. Hanratty? So to your knowledge, Mr.
15 Spence, was Employer 298, the Amazon Labor Union
16 constitution and bylaws dated 2021, the applicable
17 version of the constitution and bylaws during the
18 critical period.

19 THE WITNESS: Well, I'd have to see all the
20 pages if we could.

21 HEARING OFFICER DUNN: Yes, please.

22 MR. LARKIN: So can we go ahead, Molly, and
23 just sort of scroll slowly through. If you need us to
24 slow down or speed up, Mr. Spence to say so.

25 THE WITNESS: Okay. Yeah.

1 HEARING OFFICER DUNN: Okay. And there was
2 no signature page, is that right?

3 THE WITNESS: That's right.

4 HEARING OFFICER DUNN: Okay. Mr. Larkin?

5 BY MR. LARKIN:

6 Q. Okay. So we can take it down. Okay. So Mr.
7 Spence, during the critical period, who were the ALU's
8 officers?

9 A. The president was Chris Smalls. I was the vice
10 president of membership. Derek Palmer was the vice
11 president of organizing. Madeline Wesley was the
12 treasurer, and Karen Ponce was the secretary.

13 Q. Did Gerald Bryson hold any position in the Union
14 during the campaign period?

15 A. No.

16 Q. Is there a position in the Union that you refer
17 to as sergeant at arms?

18 A. Not during the campaign period.

19 Q. What is the sergeant at arms position?

20 A. Yeah. So I'll say even now, it's more of an
21 honorific. It's not a title that is in our constitution
22 or a position that you're elected toward. It's more of a
23 recognition of his contributions as a wrongfully
24 terminated worker organizer.

25 Q. So sort of like an honorary position?

1 A. Yeah. Doesn't confer any authority.

2 Q. Okay. When was that, sort of, honorary title
3 conferred on Mr. Bryson?

4 A. After the election period.

5 Q. After the election in March of '22?

6 A. Yes.

7 Q. All right. Does Jordan Flowers hold any position
8 with the Union?

9 A. To my knowledge, no.

10 Q. Is he an organizer with the Union?

11 A. Yes.

12 Q. Does the Union have an executive board?

13 A. Yes.

14 Q. And who serves on the executive board? Not
15 people, just what --

16 A. Position?

17 Q. Yeah.

18 A. Okay. So the Executive Officer position that I
19 just listed, the president, two vice presidents, the
20 treasurer, the secretary, and each building or workforce
21 that we organize within has their own organizing
22 committee or worker committee or steward committee. And
23 that committee has elected chairperson. That chairperson
24 also serves as a member of the executive board. And
25 that's how it was during the campaign period.

1 Q. Okay. So the chairperson of the steward committee
2 is also a member of the executive board?

3 A. Yeah. The terms organizing committee, worker
4 committee, steward committee. I use those
5 interchangeably. We could just say organizing committee
6 because that's what we had in JFK8.

7 Q. Okay. So for JFK8 during the campaign period, the
8 Union had one committee, not several?

9 A. Yeah.

10 Q. Okay. And if we call it the Organizing Committee
11 or the Workers Committee, it's essentially the same
12 thing?

13 A. Yeah.

14 Q. Who was the chair of the steward committee during
15 the campaign period?

16 A. It was Angelika Maldonado.

17 Q. Okay. And does any other person serve on the
18 executive Board?

19 A. I don't know if you want me to say the name, but
20 there's a director of organizing, a role that the
21 executive board created to assist with organizing
22 efforts during the campaign.

23 Q. And who was that during the campaign?

24 A. It was Brett Daniels.

25 Q. Okay. Any other person who would serve on the

1 executive committee besides the seven that you've listed
2 so far?

3 A. No. There is a committee chairperson for LDJ5.

4 Q. Who was that?

5 A. I actually don't think there was one during the
6 campaign period.

7 Q. Okay.

8 A. They were elected after.

9 Q. With respect to the workers committee, what is
10 the role of the workers committee?

11 A. The workers committee or the organizing committee
12 is essentially a body of workers that is open to anybody
13 who wants to organize on behalf of the Union and spread
14 like a pro-union message. Get their co workers on Board,
15 give them information, get authorization cards signed,
16 campaign for yes votes, things like that.

17 Q. Does their role include discussing and voting on
18 collective bargaining policy and strategy?

19 MR. MILNER: I'm going to object, and maybe
20 we should excuse the witness before I start getting into
21 my objection.

22 HEARING OFFICER DUNN: Mr. Spence, if you'd
23 be so kind to leave that room while the attorneys
24 discuss this. I appreciate it. And then, Mr. Milner, if
25 you could just let us know once we're safe to discuss.

1 (Witness leaves videoconference)

2 MR. MILNER: Sure. Let me. Okay.

3 HEARING OFFICER DUNN: Go ahead, Mr. Milner.

4 MR. MILNER: Sure. Got To gather my
5 thoughts. Again. I'm not sure. First of all, we have
6 stipulated through the agency status of Angelika
7 Maldonado and Brett Daniels, and there's now testimony
8 that those were the only executive board members from
9 this workers committee. So I'm not sure what the
10 relevance is of any further questions regarding the
11 workers committee is at that point.

12 HEARING OFFICER DUNN: I'm not either. Mr.
13 Larkin.

14 MR. LARKIN: Well, there are a number of
15 individuals that the upon has not stipulated to as
16 agents, and some of whom have testified, some of whom
17 have not. So I think that it is probative to ask Mr.
18 Spence questions about how these various committees
19 operated, who was on them, and what their authority was.
20 These questions are not focused on the people that he's
21 named.

22 MR. MILNER: I mean, being a member of a
23 workers committee does not make one an agent, not even
24 close, not by any construction of the facts. I mean, it
25 is by its nature you're not an agent. You're in the

1 workers committee. You're a worker at Amazon, and you
2 want to volunteer for the Union. There's no agency
3 status that you're going to this is just absolutely
4 irrelevant testimony.

5 MR. LARKIN: That's a legal argument. It's
6 not a basis on which not to elicit facts that, when
7 combined with other facts and combined with other facts,
8 and combined with other facts that have been elicited
9 throughout the course of this proceeding, could amount
10 to a finding of agency status.

11 HEARING OFFICER DUNN: Mr. Larkin, you asked
12 about a particular individual by name already. Mr.
13 Flowers, for example, nothing would preclude you from
14 doing something similar regarding other individuals that
15 haven't been stipulated to, if that's what you're
16 seeking with this witness. But I mean, I'm inclined to
17 agree that going into the details of this organizing
18 committee is not going to be relevant to any of the
19 Objections before me or to establishing agency status.

20 MR. LARKIN: Well, I would just say that the
21 CONSTITUTION grants specific powers to the committee,
22 and it's all in 298. And so, part of what I'm asking Mr.
23 Spence about is to confirm or deny that and to ask him
24 about how those powers were carried out during the
25 campaign period by the members of the workers committee

1 and whether certain individuals were part of it. So if
2 the constitution confers certain authority on people,
3 our position is that that is probative not in and of
4 itself the be all and end all, but probative of whether
5 in certain situations those individuals were acting on
6 the authority of the ALU and hence acting as agents. And
7 so, Mr. Spence is the ALU's custodian of records, and so
8 I'm asking him these questions in that capacity to sort
9 of generally establish these things.

10 HEARING OFFICER DUNN: Okay. So the
11 constitution and bylaws at 298 speaks for itself, but
12 I'll give you some leeway. But I don't think that --
13 much. Because I'm not sure much of that's going to be
14 relevant at this point in the record with the
15 stipulations that have been received regarding agency
16 status.

17 MR. MILNER: Right. I mean, there's already
18 been testimony that there is a chairperson to this
19 committee and we have stipulated to the agency status of
20 the chair people to the committee. So again, the other
21 people on the committee, that doesn't prove that they're
22 agents. It just proves that they're members of a
23 committee, which there is well established case law that
24 being a member of an organizing committee or bargaining
25 committee does not make you an agent of the Union.

1 HEARING OFFICER DUNN: Yes. That's noted,
2 Mr. Milner. And I agree.

3 MR. LARKIN: I guess I would just note for
4 the record that there are cases where the Board has
5 considered employee's positions on organizing
6 committees, among other things, as probative of a
7 question of whether those individuals were agents of the
8 Union.

9 MR. MILNER: Well, then, I mean, if there's
10 specific people you want to ask questions about, then we
11 can have a different discussion.

12 MR. LARKIN: Well, that's, sort of, what I'm
13 getting to.

14 HEARING OFFICER DUNN: Okay. Then that's
15 fine. I mean, we already had you name one individual and
16 ask -- if you want to do something similar, I certainly
17 wouldn't have any issue with that. Let's ask Mr. Spence
18 if he can come back in the room, please.

19 MR. MILNER: Sure.

20 HEARING OFFICER DUNN: Thank you.

21 MS. MIRER: I'll go after him.

22 HEARING OFFICER DUNN: Thank you, Ms. Mirer.

23 MR. MILNER: He's coming around the other
24 door.

25 (Witness re-enters videoconference)

1 HEARING OFFICER DUNN: And just as a
2 reminder, Mr. Larkin, I don't know if at any point in
3 this testimony we're going to be going into other
4 employee's Section 7 activity, but just let me know and
5 we'll go into a breakout room. All right. Mr. Spence,
6 welcome back. I remind you that you remain under oath.
7 And go ahead, Mr. Larkin.

8 MR. LARKIN: Yeah. I guess in response to
9 your last comment, Madam Hearing Officer, I don't know
10 whether asking the witness questions about specific
11 people would necessitate going into a breakout room or
12 not. I mean, we've had a lot of testimony about specific
13 individuals and what they did and didn't do, but I do
14 intend to ask about certain people who are, in some
15 cases, bargaining unit members. And so, if it would be
16 more appropriate to do that in a breakout room,
17 certainly don't have any problem with that.

18 HEARING OFFICER DUNN: Yes, please. Ms.
19 Zellinger, if you could assist us in going into a
20 breakout room, I'd appreciate it.

21 (Enters breakout room).

22 MR. LARKIN: Or we can just not ask. Is
23 everybody in here yet?

24 HEARING OFFICER DUNN: And yes, let's have
25 the Petitioner and have the Employer confirm that

1 everyone that needs to be present is present before Mr.
2 Larkin proceeds.

3 MR. LARKIN: Yeah, I think we have everyone
4 from our side.

5 MR. MILNER: I see everyone as well.

6 HEARING OFFICER DUNN: Perfect. Go ahead,
7 Mr. Larkin.

8 BY MR. LARKIN:

9 Q. Okay. I think before we broke, we were talking
10 about the workers committee, which I think we've agreed
11 is sort of synonymous with the organizing committee, is
12 that right?

13 A. Yes.

14 Q. So if a person was on the workers committee, I
15 guess they're also, for all intents and purposes, on the
16 organizing committee?

17 A. Yes.

18 Q. During the campaign period, how many individuals
19 were members of the workers committee?

20 A. It's hard to nail down a number because anybody
21 who was a vocal supporter could essentially consider
22 themselves an organizer. And so, we didn't have a
23 running count of how many people took that title for
24 themselves. I'd say over 100.

25 Q. During the campaign period, did the committee

1 have -- hold meetings?

2 A. Yes.

3 Q. Do you recall how many?

4 A. We tried to have weekly meetings.

5 Q. Okay. Members of this workers committee, they
6 would communicate with bargaining unit members regarding
7 the Union, correct?

8 A. Yeah.

9 MR. MILNER: Objection. Again, it's the same
10 objection as before.

11 HEARING OFFICER DUNN: Yes. Mr. Larkin, I
12 said some leeway and I said not much. So I think we've
13 reached that point.

14 BY MR. LARKIN:

15 Q. What did the Union do, Mr. Spence, to make sure
16 that the people who, as you say, took the title of
17 organizer for themselves were communicating the Union's
18 campaign messaging in a way that was consistent?

19 HEARING OFFICER DUNN: Mr. Milner

20 MR. MILNER: I'm sorry, I do not mean to
21 interrupt. Apparently Mr. Goldstein was not put into the
22 breakout room. I apologize.

23 HEARING OFFICER DUNN: All right. I will
24 tell the bailiff. Sorry about the interruption, go
25 ahead.

1 MR. MILNER: Sorry, Mr. Larkin.

2 BY MR. LARKIN:

3 Q. That's all right. Mr. Spence?

4 A. Sorry. I was about to say anybody in the building
5 who is pro-Union and supportive of the Union have the
6 right in the workplace to talk about the Union, whether
7 they consider themselves an organizer or not. The best
8 we could do was communicate to these people who were
9 spreading pro-Union messages. What we felt was accurate
10 information about the organizing campaign and the Union
11 we were trying to form, which was something we did by
12 communicating through literature that we handed out
13 through communications, like text messages or e-mails
14 and social media messaging, things of that nature.

15 Q. Okay. So these are all things that you
16 disseminated through organizers?

17 A. Yeah. And any pro-Union worker had access to
18 these communications.

19 Q. Okay. So one of the campaign themes that the
20 Union -- during the campaign period was asking the
21 company for \$30 an hour. Do you recall that?

22 MR. MILNER: I'm sorry, we have gone into a
23 breakout room because I thought we were going to be
24 talking about individuals, and now we're not. So if
25 that's the case, I would like to go back to the public

1 hearing room.

2 MR. LARKIN: Well, we're going to talk about
3 individuals.

4 HEARING OFFICER DUNN: Okay.

5 MR. MILNER: Well, I mean, as long as we're
6 getting there, because otherwise this hearing should
7 remain public.

8 HEARING OFFICER DUNN: Go ahead, Mr. Larkin.

9 BY MR. LARKIN:

10 A. Can you repeat the question?

11 Q. Yeah. So one of the Union's campaign themes, I
12 believe, during the campaign period was that the Union
13 was going to demand \$30 an hour wage from Amazon. You're
14 familiar with that?

15 A. Yeah.

16 Q. That's a message that the ALU created, correct?

17 A. That was a message that was kind of
18 democratically approved by the organizing committee.

19 Q. Right. So when that message was conveyed to
20 associates that associates that, you know, we're going
21 to, among other things, ask for \$30 an hour, that was
22 conveyed as the position of the Union, not the position
23 of any individual?

24 A. Yes. Based on surveys from Amazon associates. So
25 it was more a communication of information that we had

1 obtained from our coworkers.

2 Q. Yes. And then the Union formulated what its
3 position was going to be on that issue, correct?

4 A. Yeah.

5 MR. MILNER: I'm going to object again, I'm
6 not sure what relevance the Union's bargaining positions
7 have to the Amazon's Objections. And again, I'm going to
8 ask that we return to the public hearing room If we're
9 not going to be specifically speaking about individuals,
10 we can return to the breakout room at such time.

11 MR. LARKIN :That's fine.

12 HEARING OFFICER DUNN: No. I agree. Well, I
13 mean, unless we can go there right now, can we turn to
14 that testimony and then return to the public room, Mr.
15 Larkin?

16 BY MR. LARKIN:

17 Q. Well, let me try to speed this up. Mr. Spence,
18 of the 100 or so members of the workers committee,
19 certain of those numbers were designated lead
20 organizers, is that right?

21 A. Nobody designated anyone as a lead organizer. It
22 was more of an informal title given by somebody to
23 themselves, essentially when they saw themselves as
24 putting in maybe more work than others and being more
25 vocal than others. And it was just something that was

1 essentially a state of mind.

2 Q. So for instance, a person like Jason Anthony.
3 You're familiar with Jason Anthony, correct?

4 A. Yes.

5 Q. And you know that Jason Anthony held himself out
6 on social media as a lead organizer for the Union?

7 A. Yes.

8 Q. And you never told Mr. Anthony that he could not
9 hold himself out in that capacity?

10 A. I mean, if he considered himself to be a vocal
11 supporter of the Union, then I have no issue with him
12 holding himself out like that.

13 Q. Okay. So the answer to my question then was you
14 never told him that he couldn't hold himself out that
15 way?

16 A. I honestly didn't even know that he was holding
17 himself out that way.

18 Q. I think I just asked you, you're familiar that
19 Mr. Anthony holding himself out as a lead organizer and
20 you said yes.

21 A. I became familiar after the campaign period, is
22 what I was trying to specify. During the campaign
23 period, I didn't know how he was holding himself out. I
24 don't monitor everyone's social media.

25 Q. Okay. You know that Mr. Anthony was making social

1 media posts on behalf of the Union?

2 MR. MILNER: Objection.

3 HEARING OFFICER DUNN: What's your
4 objection?

5 MR. MILNER: Asked and answered.

6 HEARING OFFICER DUNN: Okay. Yeah, I think
7 that's true. Mr. Larkin.

8 MR. LARKIN: That that question was asked
9 and answered?

10 HEARING OFFICER DUNN: Repeat the question.

11 MR. LARKIN: Now of course. I forget what it
12 was.

13 BY MR. LARKIN:

14 Q. I believe that the question was -- well, Mr.
15 Spence had said I believe Mr. Spence had said you don't
16 monitor everyone's social media accounts and things that
17 they're doing. And I think what I had asked was that Mr.
18 Anthony -- is he aware that Mr. Anthony was operating
19 the ALU's Twitter account at times and making Twitter
20 posts on behalf of the Union?

21 HEARING OFFICER DUNN: You can respond to
22 that, Mr. Spence.

23 BY MR. LARKIN:

24 A. No. Mr. Anthony was not operating the ALU'S
25 Twitter account and making posts on behalf of the Union.

1 Q. Who was doing that?

2 A. It was either myself or Brett Daniels.

3 MR. LARKIN: Okay. I don't know how long I'm
4 going to keep going down with these questions. So why
5 don't we just go back to the public room and if I turn
6 back to individual names, then maybe we can come back.
7 But my questioning on this -- I intended to start with
8 names, but this is sort of the direction we're going.
9 We're not really talking about names, so, I mean, I'm
10 fine to stay, I'm fine to go, whatever everyone wants.

11 HEARING OFFICER DUNN: All right. Well, we
12 will go and then Mr. Larkin, just let us know when we
13 should return.

14 MR. LARKIN: Okay.

15 (Leaves the breakout room)

16 HEARING OFFICER DUNN: Mr. Larkin, you may
17 proceed.

18 BY MR. LARKIN:

19 Q. Okay. Mr. Spence, is it correct that the bylaws
20 of the ALU constitution provides that members of the
21 workers committee are considered stewards?

22 MR. MILNER: Objection The Constitution an
23 bylaws speak for themselves.

24 HEARING OFFICER DUNN: Sustained.

25 BY MR. LARKIN:

1 Q. Okay. Let me ask you this. Is everybody who's on
2 the organizing committee considered a steward?

3 A. Stewards are a position that is intended to exist
4 to enforce a contract. So no, because we don't have a
5 contract, they don't fulfill the role of stewards.

6 Q. So the Union has not designated anybody to be a
7 steward?

8 A. No. And it says in our constitution that stewards
9 have to be democratically elected. To this date, there's
10 not been an election for a steward.

11 Q. During the campaign, Mr. Spence, did the Union
12 set up tables in break areas of the JFK8 facility?

13 A. Yes.

14 Q. At these tables, the Union would talk with
15 employees about the campaign, is that correct?

16 A. Yes.

17 Q. Hand out things like t-shirts and flyers?

18 A. Yes.

19 Q. Well, let me ask you this way. Certainly there
20 were times where you would sit at those tables, correct?

21 A. Yes.

22 Q. And there are obviously times where other people
23 would sit at the tables?

24 A. Yes.

25 Q. How was it decided who would sit at the tables

1 and talk with employees about the ALU?

2 MR. MILNER: Objection. I don't know what
3 the relevance is of who decides when someone sits at a
4 table I don't know what this is going to.

5 HEARING OFFICER DUNN: Mr. Larkin?

6 MR. LARKIN: I mean, just yesterday there
7 was questions elicited by Ms. Mirer about the frequency
8 and of the Union setting up tables and campaigning and
9 who sat at them where they were. So we objected, the
10 testimony was permitted and --

11 HEARING OFFICER DUNN: Sorry, Mr. Larkin.
12 Go ahead.

13 MR. LARKIN: Well, no. So I'm asking him,
14 Mr. Spence, some questions about this aspect of the
15 campaign. Again, because I believe that it goes to
16 agency question and apparent authority okay. Anything
17 further than that, we have to talk outside of Mr.
18 Spence's presence.

19 HEARING OFFICER DUNN: All right.

20 MR. LARKIN: I don't think there's more to
21 say than that.

22 HEARING OFFICER DUNN: All right. The
23 testimony that you referred to from yesterday was
24 permitted as foundational to establish basic facts for
25 the testimony that followed involving a particular

1 incident. So that's why it was permitted at that time.
2 But I'll give you some leeway. But again, not much
3 because I don't think that there's going to be much that
4 you're going to establish through this line of
5 questioning. Go ahead.

6 BY MR. LARKIN:

7 Q. My question, Mr. Spence, was how would it be
8 decided who would sit at the ALU's tables and
9 communicate with employees and pass out ALU shirts and
10 flyers?

11 A. It was on a volunteer basis. Whoever wanted to
12 sit at the table and talk to workers about the Union was
13 permitted to do so.

14 Q. And how often would the Union set up and operate
15 these tables?

16 A. The most vocal supporters strive to be there as
17 often as they were available during the campaign period.
18 So many of us, like myself, for instance, we were there
19 every day. I was there every day after my shift and
20 every day on my days off.

21 Q. And when you were sitting at the tables and
22 talking to employees about the campaign, would you wear
23 ALU paraphernalia?

24 A. Yes.

25 Q. And other individuals who were sitting at the

1 tables would also wear ALU paraphernalia, correct?

2 A. Yes.

3 Q. And would the Union put out signs near or on the
4 table saying ALU or other identifiers that this was the
5 Union?

6 MR. MILNER: I'm going to object again, I'm
7 still not sure where this is going. All of this
8 testimony about a table.

9 HEARING OFFICER DUNN: Yeah. I think that
10 both on relevance grounds and also cumulative at this
11 point, we have ample testimony in the record with
12 respect to the tables and what was on the tables and
13 where they were. So I'd appreciate it Mr. Larkin, if we
14 can move on.

15 MR. LARKIN: All right. So I think we
16 should go back to the breakout room.

17 HEARING OFFICER DUNN: Okay. Ms. Zellinger,
18 could you assist us please?

19 (Enter breakout room).

20 And once both parties confirm everyone is
21 here that needs to be here. Okay. Mr. Larkin.

22 MR. LARKIN: Just a second, I'm looking now.
23 Yeah, I think we got everybody.

24 MR. MILNER: Actually, you know what? No,
25 I'm sorry, everyone is here.

1 HEARING OFFICER DUNN: Go ahead, Mr. Larkin.

2 BY MR. LARKIN:

3 Q. Mr. Spence, Mr. Anthony was one of the organizers
4 who would staff the ALU tables, correct?

5 A. No.

6 Q. So Mr. Anthony never handed out any ALU
7 literature or sat any ALU table during the entire
8 campaign period?

9 A. I misunderstood the question. I thought you meant
10 that he was in control of staffing the table. No. He
11 was one of the people who would volunteer to sit at the
12 table.

13 Q. And what about Justine Medina?

14 A. Yes.

15 Q. And how often would Mr. Anthony sit at the table
16 and distribute ALU campaign material?

17 MR. MILNER: Your Honor, I object to this
18 entire line of questioning. However many times Mr.
19 Anthony sat at the table is completely irrelevant to his
20 agency status. As is whether he gave out shirts or gave
21 out lanyards or answered questions, it's all irrelevant,
22 your Honor.

23 MR. LARKIN: Can we ask Mr. Spence to step
24 out?

25 HEARING OFFICER DUNN: Mr. Spence, thank

1 you.

2 (Witness leaves videoconference)

3 And Mr. Milner, if you could confirm.

4 MR. MILNER: Yeah. As soon as he -- okay.

5 HEARING OFFICER DUNN: All right.

6 MR. LARKIN: First of all, Mr. Spence is
7 serving as the ALU's custodian of records. So he's here
8 as an individual. He's also here as the ALU's custodian
9 of records. So I'm asking him general questions about
10 the Union. And so, nothing that I ask Mr. Spence in that
11 regard is cumulative. That's number one. Number two, I
12 couldn't disagree more that this all goes to apparent
13 authority. Associates have no means of distinguishing
14 between the officers of the Union and organizing
15 committee members when they're sitting at the table,
16 speaking on behalf of the Union, passing out literature,
17 hearing ALU paraphernalia. And so, evidence of who was
18 working at these tables is probative of agency status in
19 as much as it goes to the apparent authority of these
20 individuals to act and speak on behalf of the Union.
21 There are different agency statuses for different people
22 in different roles. And one of the ways that we're
23 attempting to establish agency for some of these
24 individuals is by their apparent authority. And the test
25 for that is, what did the bargaining unit think These

1 people -- who they were, were they speaking on behalf of
2 the Union or not? And so the evidence of how these
3 individuals held themselves out to the bargaining unit
4 is probative of that. And so, all of this entire line of
5 testimony is plainly relevant to that. And so, whether I
6 ask about a specific name or not or whether I ask
7 questions that are intended to have the witness testify
8 generally about what happened at these tables, it's all
9 clearly relevant and probative of that issue. And that
10 is what I'm seeking to do here with Mr. Spence. And as
11 the individual who's sort of essentially standing in for
12 the Union, he is the most knowledgeable individual about
13 the ALU and its operations. And so, he's the appropriate
14 person to ask all of these questions.

15 HEARING OFFICER DUNN: Mr. Milner?

16 MR. MILNER: Your Honor, first of all, there
17 hasn't been any testimony presented in 20 days of
18 hearing that anyone was confused about the authority of
19 anyone who was at the table. In addition to that, Amazon
20 has already had Ms. Medina and Mr. Anthony on the stand,
21 and he could have asked them whatever questions they
22 wanted. So I don't understand why Mr. Spence would be
23 asked these questions. It is irrelevant because under
24 this logic, any Union supporter that chooses to
25 volunteer and help a Union organizing drive becomes an

1 agent of the Union. And that is just not the case law.
2 We are wasting time with irrelevant questions and
3 cluttering the record. It's just irrelevant. It is
4 completely and utterly irrelevant.

5 HEARING OFFICER DUNN: So Mr. Larkin, we
6 went through a similar argument when Ms. Medina was
7 testifying, and I raised a concern that the testimony
8 that was being elicited with respect to her and her
9 volunteering as an eager volunteer of the Union did not
10 appear to be sufficient to confer agency status under
11 Board case law. And I cited a number of cases in support
12 of that proposition, and I will not repeat that here,
13 but the Board focuses on whether the Union had relied
14 exclusively on such pro-Union employees to convey its
15 message such that the Union is otherwise absent from the
16 campaign, rendering the pro-Union employees the only
17 conduit for Union communication to employees. That's one
18 example, and so far in the record don't have anything
19 remotely close to that. So if that's where we're
20 heading, if we're going to get evidence of that nature,
21 sure. But if we're just going to talk about how many
22 times Mr. Anthony, for example, was present at the table
23 handing out lanyards and buttons and t-shirts, that's
24 not going to get to agency status.

25 MR. LARKIN: Well, I just respectfully beg

1 to differ. There's evidence in the record, throughout
2 the record of other actions that these and other
3 individuals have taken. And what we have done throughout
4 this case on this particular issue is inappropriately
5 and incorrectly, in my view, look at each witness and
6 each line of questioning in a vacuum, as if that line of
7 questioning either will or won't establish the agency
8 status of Mr. Smith. And that is simply not how it's
9 done. We are entitled to present evidence through --
10 what we're on witness 50 now, or something like that, of
11 the actions taken throughout the campaign by various
12 individuals. This is simply one area that we're looking
13 to do that. And I would state that the witness has
14 testified this morning that when individuals were
15 communicating things like the Union's contract demands,
16 those are the Union's positions, not something that I
17 just decided to make up because I really want a Union.
18 So I'm going to go sit at the Union's table and make up
19 all the things that the Union is going to get for you.
20 He's already testified that's not how this was done. And
21 so I think that some of this evidence that I've already
22 elicited from him is probative of this line of inquiry.
23 And I think that limiting our ability to continue to
24 develop the record on that would be would be
25 inappropriate.

1 MR. MILNER: Your Honor, the fact that
2 someone parrots a Union campaign or bargaining position
3 does not make them an agent. It makes them a supporter,
4 just as all of this makes them a supporter. And frankly,
5 you've already ruled. So I would suggest that we just go
6 back to the main room and continue on.

7 HEARING OFFICER DUNN: Mr. Larkin, do you
8 intend to elicit more names where we should stay in the
9 breakout room, or shall we return to the main session?

10 MR. LARKIN: I might. Yeah.

11 HEARING OFFICER DUNN: You might right now
12 or you might in a few questions? I'm just trying to
13 gauge whether we should stay here now or come back.

14 MR. LARKIN: I guess, Why don't we just stay
15 here now so I can try to finish with that.

16 HEARING OFFICER DUNN: Okay. All Right. If
17 we could get Mr. Spence back, I'd appreciate it.

18 (Witness re-enters the videoconference)

19 THE WITNESS: Coming back.

20 HEARING OFFICER DUNN: Thank you. Okay. Mr.
21 Spence, I remind you that you remain under oath. And go
22 ahead, Mr. Larkin.

23 BY MR. LARKIN:

24 Q. Mr. Spence, do you know how many times that Mr.
25 Anthony worked at the ALU tables during the campaign?

1 MR. MILNER: Objection. Your Honor, we just
2 had this conversation.

3 HEARING OFFICER DUNN: We did, Mr. Larkin.

4 MR. LARKIN: We did.

5 HEARING OFFICER DUNN: Yes. And I ruled.
6 And so I would ask that you move on.

7 MR. LARKIN: I don't understand. I guess I'm
8 just missing it. How am I supposed to move on? Because I
9 want to ask about other individuals. We stayed in the
10 breakout room so I could do it. I just did, and I got an
11 objection.

12 HEARING OFFICER DUNN: Well, I think that
13 you can ask other questions, but the exact example I
14 gave was asking how many times Mr. Anthony was at the
15 table as something that I did not see as being relevant
16 to conferring agency status under Board case law. So
17 just ask a different question.

18 MR. LARKIN: I think maybe at this point,
19 it'd probably be appropriate for me to make a proffer of
20 the areas that I would like to inquire about, because
21 there are more. And maybe if I could take -- we've been
22 going now for about an hour and a half with Mr. Spence.
23 Anyway, if we could take a three or five minute break, I
24 can put that together, and then we can either do it or
25 we can move to something else.

1 HEARING OFFICER DUNN: Okay. And so, just so
2 I'm clear, we should stay in the breakout room, take a
3 five minute break, you'll come back, make a proffer, mr.
4 Spence will be elsewhere during that proffer, and then
5 we'll determine how we're going to go from there.

6 MR. LARKIN: Yeah, I think that might help
7 speed things along.

8 MR. MILNER: Is the proffer going to have
9 specific names in it.

10 MR. LARKIN: Yes.

11 MR. MILNER: Okay.

12 HEARING OFFICER DUNN: That'S fine. So let's
13 go off the record. Five minutes.

14 (Off the record)

15 (On the record).

16 HEARING OFFICER DUNN: And we are back on
17 the record. Go ahead, Mr. Larkin. You're muted, Mr.
18 Larkin.

19 MR. LARKIN: Sorry about that -- I'm getting
20 a message. Oh, never mind. I thought one of our folks
21 had been kicked out of the breakout room, but we're
22 good. If permitted, I would ask Mr. Spence about the
23 number of times that Jason Anthony, Justine Medina,
24 Cassio Mendoza, Tristan Martinez and Jordan Flowers
25 staffed the ALU's break room tables. I would ask Mr.

1 Spence additional questions about how he and the Union
2 determined a schedule for who would sit at the tables
3 and when.

4 HEARING OFFICER DUNN: Okay. Mr. Spence has
5 already testified that individuals volunteered to serve
6 at the ALU table when they were available.

7 MR. LARKIN: I believe he also intimated
8 that there were some decisions made, and I would
9 question him about how it was decided who would come
10 when. In other words, I don't understand his testimony
11 to be there was just an empty table with a bunch of
12 stuff, and anybody could walk up and just work that day.
13 There was a staffing plan. And so, I would ask him
14 questions about that and how that was derived and who
15 participated in making it.

16 HEARING OFFICER DUNN: Okay. That's not how
17 I understood his testimony.

18 MR. MILNER: And it definitely wasn't a
19 staffing plan. That implies that, again, that they were
20 employees, these were volunteers.

21 HEARING OFFICER DUNN: And that was crystal
22 clear in his testimony, I thought. And again, the Board
23 case law is clear that people who volunteer to do the
24 traditional kind of organizing things, getting cards
25 signed, passing out Union paraphernalia, that's not

1 sufficient to confer agency status. So I just don't
2 think that's going to get us there. If you want to
3 clarify the record with respect to how it was determined
4 who was going to stack the tables, I'll permit you to do
5 that. But beyond that, I just don't see how the
6 testimony you're seeking to enter into the record would
7 be relevant to any of the Objections or to proving
8 agency status under Board law.

9 MR. LARKIN: Okay. So we note our
10 disagreement on the law, and I guess based on that, we
11 can probably go back to the main room because I won't be
12 asking him questions about individuals.

13 HEARING OFFICER DUNN: Okay.

14 MS. MIRER: I think we have to get Connor
15 back to the room.

16 MR. MILNER: He's coming.

17 HEARING OFFICER DUNN: Let's briefly go off
18 the record while we wait.

19 (Off the record)

20 (On the record).

21 HEARING OFFICER DUNN: Let's go back on the
22 record. And I remind you, Mr. Spence, that you remain
23 under oath. And go ahead, Mr. Larkin. And you're muted.

24 BY MR. LARKIN:

25 Q. Okay. Mr. Spence, I think where we left off, I

1 was asking you about the break room -- ALU tables in the
2 break room. At some point, I think I asked you a
3 question about how it was determined who would work on
4 any particular day at the tables. Do you know that?

5 A. Yeah. So like I said, it was essentially on a
6 volunteer basis. If somebody could come in, they might
7 volunteer to work on their break, they might volunteer
8 to stay late after work, they might volunteer to come in
9 on their day off. Generally, there was a sentiment that
10 late in the campaign, everybody should do everything
11 they can to make sure that there was some kind of
12 pro-Union presence in the break room, but it wasn't
13 really coordinated. And there were many days where,
14 unfortunately, we couldn't have anybody in the break
15 room because nobody was available. Or there were times
16 where we had set up the table, place literature on it,
17 but left it unattended.

18 Q. And how, if at all, would the ALU keep track of
19 who was working at the table on a given day?

20 MR. MILNER: I'm going to object to this
21 continued use of the term "working." The testimony is
22 clear that they were volunteers.

23 HEARING OFFICER DUNN: Mr. Larkin, could you
24 please rephrase?

25 BY MR. LARKIN:

1 Q. Same question. How would the Union keep track of
2 who was sitting at the tables passing out literature or
3 other ALU paraphernalia on any given day?

4 A. We didn't keep track. There were no scheduled
5 shifts. I could advertise in our organizing chat that I
6 was going to be in the break room on a certain day. If
7 anyone wanted to join me, they were welcome to it. Or I
8 would also say, hey, guys, I'm normally in the break
9 room on this day, but for whatever reason, I'm not
10 available this week. If anyone is open to kind of taking
11 over my presence, it was on a volunteer basis.

12 Q. Who provided the materials that were given out at
13 the tables?

14 A. For the most part, I coordinated making and
15 printing the materials.

16 Q. And what about ALU t-shirts and buttons?

17 A. I coordinated ordering the t-shirts. The buttons
18 were donated to us.

19 Q. What about the ALU lanyards?

20 A. I coordinated ordering the lanyards.

21 Q. And is it true that in some instances the Union
22 would hand out or collect authorization cards at the
23 tables?

24 A. Not in the break rooms. The main times where we
25 collected authorization cards, those were the days where

1 we were outside the building at the bus stop. There's a
2 distinction I want to draw between that period and the
3 period where we took to maintaining active presence in
4 the break room during the election period. And that's
5 because there was a national settlement between Amazon
6 and the Board that affirmed our right to be in the break
7 rooms during our non-working time, and that was around
8 December and January.

9 Q. Did the Union never solicit authorization cards
10 inside the building? Only outside the building, Is that
11 your testimony?

12 A. There were probably times where people on their
13 breaks had cards on them and got coworkers to sign them,
14 but it was never a coordinated effort in the way that we
15 engaged in card signing outside the building.

16 Q. Okay. So outside the building, the Union --
17 you're testifying that the Union had table set up in a
18 way that was sort of similar to the tables inside the
19 break room?

20 A. Yes. The distinction I want to make is that when
21 we set up tables in the break room, we didn't have
22 authorization cards on those tables because by that
23 time, our petition for the election had already been
24 approved. There was no need to get authorization card
25 signed. So we had other kinds of literature. We had

1 pamphlets that had to do with the election and surveys
2 about what Amazon workers would like to see in the Union
3 contracts, things of that nature.

4 Q. Okay. So when you solicited authorization cards
5 outside the building, who created the cards?

6 MR. MILNER: Objection. What is the
7 relevance of this?

8 HEARING OFFICER DUNN: I understood Mr.
9 Spence's testimony to be that the cards were signed
10 prior to the critical period that's relevant to the
11 Objections before me. So I fail to see the relevance of
12 your question, mr. Larkin.

13 BY MR. LARKIN:

14 Q. Mr. Spence, did the ALU collect any authorization
15 cards after December 22, 2021?

16 MR. MILNER: I'm going to object again to
17 the relevance. It is Objection 4. And as the argument
18 has been made on multiple occasions, the fact that cards
19 may or may not have been submitted after the filing of
20 the petition is irrelevant, as that is well within the
21 rules of the NLRB.

22 MS. FRIEDHEIM- WEIS: I join in that
23 objection. Any testimony should not be elicited
24 regarding the showing of interest. It is purely an
25 administrative matter and not litigable, and

1 specifically in the R case manual that no live testimony
2 is to be elicited regarding the showing of interest.

3 HEARING OFFICER DUNN: Yes. And I've made
4 that ruling a number of times on the record, so there
5 should not be any testimonial listed regarding the
6 showing of interest.

7 MR. LARKIN: And I did not seek to elicit
8 such testimony. I asked questions about card signing at
9 ALU tables inside the critical period merely for the
10 purpose of establishing that these tables were being
11 operated by the Union During the critical period. Mr.
12 Spence made a distinction between activities inside and
13 outside. We've talked extensively about inside. I'm now
14 simply asking him about the distinction that he drew
15 with respect to the Union's tables on the outside.

16 MR. MILNER: Did I misunderstand the
17 question? Because I thought you were asking who had the
18 authorization cards printed.

19 MR. LARKIN: All I want to establish, and
20 maybe we can just stipulate to this, is that the
21 authorization cards were created and maintained by the
22 Union. I don't care about any individual. And the fact
23 that they were solicited at the Unions -- These tables,
24 I think, is relevant to establishing sort of the nature
25 of these tables. These are Unions tables, not some

1 random person.

2 MR. MILNER: Your Honor, there's just no
3 relevance to authorization cards are not relevant to
4 this proceeding.

5 HEARING OFFICER DUNN: I'm inclined to
6 agree, Mr. Larkin.

7 BY MR. LARKIN:

8 Q. Okay. Mr. Spence, I'm going to show you a couple
9 of documents and ask you some questions about the
10 documents. First, I guess let me ask you a couple of
11 questions first. So Mr. Spence, did you serve as an
12 observer in the election?

13 A. Yes.

14 Q. Okay. Do you recall what election periods that
15 you served as an observer?

16 A. I know that I served for the morning session on
17 the first day, and I believe I was also present in the
18 morning session on the second day and another evening
19 session. I don't recall exactly the other session or
20 other sessions. I believe I served at least for three
21 sessions.

22 Q. So you know that Friday morning, you think maybe
23 Saturday morning and then you're not sure, but another
24 evening?

25 A. Yeah. I definitely was present for an evening

1 session.

2 Q. In answering that, are you sort of
3 differentiating between the times that you, sort of,
4 were present at pre-election and post-election
5 conferences as the union's representative from times
6 where you actually stayed and served as an observer?

7 A. Yeah. Those were distinct instances. I don't
8 think there was ever a point where I was an observer and
9 also acted as a representative for the pre- and post-
10 conference.

11 Q. Okay. So I'd like to ask you to take a look at
12 Employer's Exhibit 2927. Can we put that up? Okay. And
13 before I go any further -- don't go any further, Molly.
14 Madam Hearing Officer, I'll represent that Employers
15 Exhibit 2927 are the ALU's observer designations. This
16 was a document produced, I believe, by the Amazon Labor
17 Union. I have some questions that I'd like to ask Mr.
18 Spence about, but in order to do that, as we scroll
19 through this, this will reveal individual employee
20 names. So these are designated observers. I don't know
21 whether we need to do this in the breakout room or not,
22 but I defer to you on that.

23 HEARING OFFICER DUNN: I'll defer to the
24 Petitioner. Mr. Milner?

25 MR. MILNER: I'm going to ask Connor what he

1 prefers.

2 THE WITNESS: So this is going to list names
3 of Observers.

4 MR. MILNER: Yeah, it's the names of the
5 Observers that we provided to the Board.

6 THE WITNESS: No, I don't have an issue. We
7 don't have to go no breakout with that.

8 HEARING OFFICER DUNN: Please proceed, Mr.
9 Larkin.

10 BY MR. LARKIN:

11 Q. All right. So Mr. Spence, this is a document that
12 was produced by the Union, and I'll ask you first, do
13 you recognize the first page?

14 A. I don't recall.

15 Q. You don't recall whether you ever saw this?

16 A. I may have seen it before. I really, I don't
17 recall if I've seen it before. I might have.

18 Q. Did you not produce this document as part of the
19 ALU's document production?

20 A. I don't have access to that document.

21 Q. Okay. So this is not a document that you produced
22 as part of the documents that you turned over?

23 A. I might have produced it.

24 MR. MILNER: Are you asking him as an
25 individual or as the custodian of records? Maybe we

1 should clarify that.

2 BY MR. LARKIN:

3 Q. Yeah, the latter?

4 A. All right, so the custodian record documents, if
5 it was anything to do with the Board processes, then I
6 was assisted by my attorneys in producing that. So if
7 this was produced as part of the custodian records, then
8 yes.

9 Q. So if Mr. Spence can't authenticate this, can we
10 stipulate to its authenticity as a document produced by
11 the Amazon Labor Union?

12 MR. MILNER: Yeah. I'll represent that
13 those were -- I mean, once we get through all of them, I
14 can certainly represent that those are, in fact, the
15 designation of observer forms that were submitted to the
16 NLRB.

17 HEARING OFFICER DUNN: That stipulation is
18 received.

19 BY MR. LARKIN:

20 Q. Okay. So Mr. Spence, I want to sort of run
21 through this and ask you about some of the other
22 Observers, if you know. So can we go to page 2? Okay.
23 So Mr. Spence, do you recall Mr. Anthony serving as an
24 observer during the election?

25 A. Yes.

1 Q. And do you know which voting sessions he served
2 in that role?

3 A. I recall being with him for the morning session
4 of the first day. I believe he was also serving on the
5 evening session of the first day. I don't -- off the top
6 of my head, I don't recall the sessions that everybody
7 served.

8 Q. Okay. Well, we'll go through these and see if
9 you remember any. Let's do the next one. Michelle
10 Valentines, do you know who she is?

11 A. Yes.

12 Q. And do you recall that she served as an observer?

13 A. Yeah. I believe that she also served on that
14 first morning session and possibly that first evening
15 session.

16 Q. Okay. Let's do the next one. Do you know Sean
17 Davidson?

18 A. I don't personally know him.

19 Q. Okay. Do you know when he served as an observer?

20 A. I do not.

21 Q. Okay. Let's do the next one. Brima Sylla?

22 A. Yes.

23 Q. I don't know if I'm pronouncing that cortrectly.
24 Do you know him?

25 A. Yes.

1 Q. And do you know when he served as an observer?

2 A. I don't recall an exact session, but I know at
3 one point he and I were observers on the same evening
4 session.

5 Q. Okay. So he was with you on some evening
6 session, you just don't know which one?

7 A. Yes.

8 Q. Okay. Let's go to the next one. Antonio Mendoza.
9 Do you know Mr. Mendoza?

10 A. That's Cassio Mendoza. Cassio is his preferred
11 name. Yes, I know him.

12 Q. And do you recall which, if any, days he served
13 as an observer?

14 A. I don't recall a specific day. I know I also was
15 an observer at the same evening session as him. I don't
16 remember which one.

17 Q. Let's do the next one. Okay. Mr. Palmer. You know
18 Mr. Palmer?

19 A. Yes.

20 Q. And do you recall when Mr. Palmer was -- served
21 as an observer?

22 A. No.

23 Q. All right. Let's do the next one. Angelika
24 Maldonado, You know Ms. Maldonado?

25 A. Yes.

1 Q. And do you know when Ms. Maldonado served as an
2 observer?

3 A. No.

4 Q. Okay. Let's see. How many more do we have? Next
5 one. Brett Daniels. You know Mr. Daniels?

6 A. Yes.

7 Q. And do you know which sessions he served as an
8 observer?

9 A. No.

10 Q. All right. Let's do the next one. Karen Ponce, do
11 you know Ms. Ponce?

12 A. Yes.

13 Q. And do you know hich sessions she served as an
14 observer?

15 A. No.

16 Q. Okay. Do the next one, I think we're almost done.
17 Tristan Dutchen. Do you know Mr. Dutchen?

18 A. Yes.

19 Q. And do you know which sessions he served as an
20 observer?

21 A. No.

22 Q. And then I think there's one more. Tristan
23 Martinez, do you know Mr. Martinez?

24 A. Yes.

25 Q. And do you know which sessions that he served as

1 an observer?

2 A. No.

3 Q. All right. I think we can take that down, Molly.
4 Mr. Spence can't authenticate the document, but I know
5 we have a stipulation as to its authenticity. I would
6 like to move for its admission into the record based on
7 that stipulation.

8 HEARING OFFICER DUNN: Could you put the
9 exhibit back up, Ms. Hanratty? 2927. And I just have a
10 question, and perhaps it's for Mr. Milner. The dates up
11 in the top right, Did you put those dates in there, Mr.
12 Milner.

13 MR. MILNER: I put those down when I
14 submitted them to the NLRB, yes.

15 HEARING OFFICER DUNN: Okay. That's all I
16 needed. And any objection to the receipt of 2927 based
17 on the stipulation between the parties That I received.

18 MR. MILNER: No objection.

19 HEARING OFFICER DUNN: Okay. Ms. Weis.

20 MS. FRIEDHEIM- WEIS: No objection.

21 HEARING OFFICER DUNN: All right. 2927 is
22 received.

23 (Employer's Exhibit 2927 received)

24 BY MR. LARKIN:

25 Q. I guess. One other question, Mr. Spence. If you

1 know, can you put those back up, Molly? Do you know Mr.
2 Spence, what the date the handwritten dates in the top
3 right hand corner of each page of Exhibit 2927 mean?

4 A. The handwritten dates in the top right.

5 Q. Yeah. So we're looking at the page that is
6 Justine Martinez's designation form. And there's a
7 handwritten 330 in the top right hand corner. Do you
8 know what that means?

9 A. No.

10 Q. Okay. All right. We can take that off. All
11 right. Let's see here. Mr. Spence, one of the ways that
12 the Union communicated with associates was through text
13 messages; is that correct?

14 A. Yes.

15 Q. Okay. Can I ask that we put 516 up. And before we
16 do, Molly, can we make sure that it's the redacted one?
17 Okay. Good. So Mr. Spence, I put up on the screen, a
18 document, a photo of a text thread. We've marked it
19 Employer 516. For confidentiality reasons, we've
20 redacted the phone number at the top. And my question to
21 you is, do you recognize the messaging in the texts in
22 the photo?

23 A. Yes.

24 Q. And can you tell us what those are?

25 A. So at a point during the campaign, we tried to

1 set up a text banking campaign, having volunteers that
2 were Amazon workers reach out to their coworkers to talk
3 about the Union and spread information that they needed
4 to know for the election.

5 Q. Okay. And who drafted, If you know, the language
6 that we're looking at in these text messages?

7 A. It was kind of a group effort and then approved
8 by the executive board.

9 Q. And to whom -- now, this obviously is a text
10 message that was received by one individual. But who did
11 the Union send these text messages out to?

12 A. The workers that were on the Excelsior list. So
13 workers that we believed to be bargaining unit numbers.

14 Q. Now -- Okay. And where it says at the top of the
15 message, this is Mitch, I'm an LDJ5 worker and an
16 organizer with the ALU. Is Mitch, like, an actual
17 person?

18 A. Yes.

19 Q. Do you know who that is?

20 A. Yes.

21 Q. Who is that? Before I -- Ms. Dunn, I guess I'm --

22 MR. MILNER: Object. I'm objection to
23 relevance. What difference does it make.

24 HEARING OFFICER DUNN: I agree. Mr. Larkin,
25 I don't understand why we need to identify that

1 particular individual.

2 MR. MILNER: Sending texts on behalf of the
3 Union does not make one an agent of the Union. It makes
4 someone a volunteer and a supporter.

5 MR. LARKIN: Yeah. Again and again, we're
6 doing the same thing. We're looking at evidence in a
7 vacuum, which is the inappropriate way to do it. And a
8 determination about various individuals and their legal
9 status can be made at the conclusion of the hearing,
10 based on all the evidence that's submitted. Simply
11 trying to identify if Mitch is a real human being or a
12 made up name.

13 HEARING OFFICER DUNN: Mr. Larkin? Sorry.
14 516 itself states that that person purportedly named
15 Mitch is an LDJ5 worker. That's not even an employee of
16 JFK8. So I just did not think that Mitch's name, if he
17 exists as an actual person, is going to be relevant to
18 the Objections before me or to the agency status.

19 MR. LARKIN: Well, but the text goes on to
20 say, on March 25 to 30th, we have a chance to make
21 history, et cetera. So the individual is clearly
22 referring to the election in this case, not any other
23 case. And it is certainly true that individuals who are
24 not employees at JFK8, or even not employees of Amazon,
25 can be agents of the Amazon Labor Union.

1 MR. MILNER: But sending a text telling
2 people to vote does not make one an agent. There's no
3 amount of text message evidence that's going to create
4 an agency relationship here. It's just going to clutter
5 the record.

6 HEARING OFFICER DUNN: I'm inclined to
7 agree, Mr. Larkin.

8 MR. LARKIN: Okay, well, we'll note our
9 disagreement, and based on Mr. Spencer's testimony would
10 move the admission of 516.

11 HEARING OFFICER DUNN: Mr. Milner.

12 MR. MILNER: I object to the relevance.

13 HEARING OFFICER DUNN: Ms. Weis.

14 MS. FRIEDHEIM- WEIS: Doesn't really go to
15 Objections 1 through 12, but legally speaking, as far as
16 apparent authority, it's irrelevant.

17 HEARING OFFICER DUNN: I agree to the extent
18 that Employer's 516 is being offered to prove agency
19 status. It's not relevant.

20 MR. LARKIN: Well, it's being offered in
21 support of Objection 17, regardless of who Mitch is.

22 MR. MILNER: I object again, then, because
23 it clearly does not -- it doesn't go towards Objection
24 17 at all. Objection 17 is that the Petitioner
25 unlawfully pulled employee support, engaged in unlawful

1 interrogation, and created the impression of
2 surveillance during the critical period. Simply asking
3 someone, can I count on you to vote yes? It's certainly
4 far away from unlawful polling by any objective
5 standard. It's certainly not interrogation, and I don't
6 know how a text message to someone that you can reply
7 stop to if you don't want to receive them anymore could
8 possibly create the impression of surveillance.

9 HEARING OFFICER DUNN: Ms. Weis, as to
10 Objection 17, any objection?

11 MS. FRIEDHEIM- WEIS: RD rep will not take
12 position regarding Objection 17.

13 HEARING OFFICER DUNN: Mr. Larkin, so the
14 portion of 516, at least the page that we're seeing, the
15 very top message, so am I correct that you're relying on
16 the "Can I count on you to vote yes?" Portion as
17 relevant to Objection 17.

18 MR. LARKIN: Yes. We believe this message,
19 in conjunction with other evidence that's been elicited
20 during the hearing, is probative of Objection 17,
21 particularly in light of Mr. Spencer's testimony that
22 this message was sent to everyone on the Excelsior list.

23 HEARING OFFICER DUNN: Okay. I will admit
24 Employer 516 noting the relevant objection from both
25 counsel. Bot as to 8 and as relevant to Objection 17.

1 (Employer's Exhibit 516 received)

2 BY MR. LARKIN:

3 Q. Okay. We can take that down. Mr. Spence, is it
4 true that another method that the Union used to
5 communicate with the bargaining unit was through the
6 distribution of flyers?

7 A. Yes.

8 Q. Who generated the content that went on to the
9 Union's flyers?

10 A. For the most part --

11 MR. MILNER: I'm going to object. I don't
12 know. Again, are we asking who generated the content?
13 Are we asking who approved the content? Because I'm not
14 sure. Where are we going with this again.

15 MR. LARKIN: Well, we can ask -- I mean, I
16 certainly can rephrase, and I think what I intended to
17 get to here is who would approve the content that was
18 ultimately distributed via ALU flyers.

19 HEARING OFFICER DUNN: Mr. Spence, go ahead.

20 BY MR. LARKIN:

21 A. Okay. Essentially, it was approved by the
22 executive board.

23 Q. Okay. I want to show you a couple of documents
24 and ask you a few questions about them. Can we put up
25 2921, please? Actually, well, I don't know if I'm going

1 to put these up in order, but that's fine. We'll take
2 them as they come. 2921. Mr. Spence, 2921 is actually a
3 front and back document. So I'm showing you page 1, and
4 that's page 2. And I'll represent this is a document
5 that you produced to us last night. Do you recognize
6 2921?

7 A. Yes.

8 Q. And what is it?

9 A. It's a quarter sheet flyer or leaflet that we
10 would hand out to workers during the campaign period.

11 Q. All right.

12 A. It was the one we handed out two days before the
13 polling started.

14 Q. Okay. And that's why I said I was going out of
15 order, because they're going to be other ones that were
16 chronologically, I believe, earlier. But in any case, I
17 would offer 2921 at this time.

18 HEARING OFFICER DUNN: Any objection, Mr.
19 Milner?

20 MR. MILNER: Relevance.

21 HEARING OFFICER DUNN: And Ms. Weis?

22 MS. FRIEDHEIM- WEIS: I don't have an issue
23 with the substance of the flyer, but I don't see how
24 it's relevant to any of the Objections.

25 HEARING OFFICER DUNN: I'm inclined to agree.

1 Mr. Larkin.

2 MR. LARKIN: Well, I'm not going to ask the
3 witness any other questions about it, so I suppose that
4 I suppose that we can just go ahead and do this. But the
5 flyer states you can vote anytime the polls are open,
6 even during your shift. That is relevant to Objections,
7 I believe. 6 and 7, there has been testimony elicited
8 and attempted to be elicited about Amazon's
9 communications with employees regarding the release
10 schedule and voting times. And so that testimony was
11 admitted over our Objections, I would add. And so I
12 believe that the fact that the Union was communicating
13 similarly to associates is at minimum. If testimony
14 about Amazon's communications regarding voting times is
15 admissible, then testimony and evidence from the Union
16 regarding any of its communications about the same
17 subject should be admissible.

18 HEARING OFFICER DUNN: Okay, one at a time.
19 We'll start with Mr. Milner, please.

20 MR. MILNER: Your Honor, the release
21 schedule, the testimony about that, that has to do with
22 Objection 6, because it is Amazon that came up
23 essentially with the form of release schedule that we
24 all agreed to, necessarily because Amazon -- it's
25 Amazon's plant or facility and they make the schedules

1 and they would be in the best position to create the
2 release schedule. And we all went along with it. And
3 then it turned out that the way the release schedule was
4 created arguably created lines, especially on the first
5 day of voting. However, here, the fact that there is a
6 flyer that just contains true information is completely
7 different from the circumstance Mr. Larkin is speaking
8 about. The fact that you can vote anytime the polls is
9 open is true. So that is relevant to nothing. The fact
10 that Amazon may have gone out of their way to create a
11 release schedule in which people were released multiple
12 nights and then the managers encouraged everyone to go
13 vote all at the same time is relevant. That's the
14 difference here, Your Honor. And that is why this
15 document is irrelevant.

16 HEARING OFFICER DUNN: Okay. And Ms. Weis,
17 go ahead.

18 MS. FRIEDHEIM- WEIS: My issue, now that Mr.
19 Larkin has explained himself as to why he plans to use
20 exhibit 2921, I do object because when he's talking
21 about Objection 6 and 7, that goes directly in squarely
22 and solely to the function of the NLRB and how it ran
23 the election. So there is no relevance and no connection
24 as to how and what the Union may have put together in a
25 flyer.

1 HEARING OFFICER DUNN: Yes. I agree that
2 2921 is not relevant with respect to Objections six and
3 Seven pertaining to the Region's alleged actions. And in
4 particular, Objection 6 is about the region's staffing
5 and equipment. And objection seven is about alleged
6 turning away voters and telling voters are only being
7 allowed to vote in alphabetical order. 2921 is not
8 relevant. It's rejected.

9 MR. LARKIN: So on that basis, I'd like to
10 ask the Hearing Officer to revisit and strike the
11 testimony that has been elicited to this point in the
12 hearing about the release schedule and testimony
13 regarding the release of voters to vote in the election.
14 If, as Ms. Weis contends, that is irrelevant to
15 Objection 6, the testimony should never have been
16 elicited over our Objection, it should be struck and it
17 should not be considered by the Hearing Officer in
18 making her ruling.

19 MR. MILNER: Your Honor, that testimony, as
20 I just explained, was offered for a wholly different
21 reason.

22 HEARING OFFICER DUNN: Yes. And the reason
23 that Mr. Milner gave is the reason why I received it.
24 Because if the question is what caused the lines, that
25 testimony is relevant to that.

1 MR. LARKIN: Right. And that is exactly why
2 I am offering this exhibit. What caused the lines? And
3 so it could be more than one thing. We obviously contend
4 that it was the NLRB's mismanagement of the election.
5 Testimony has been elicited since then, that somehow it
6 was Amazon's responsibility, this flyer and this
7 statement true -- Or whether it states a fact, whether
8 it states the truth or not, is irrelevant. We contend --
9 suggest that perhaps to the extent the Union was
10 communicating a very similar message to the company as
11 to releasing and when employees can vote, that it is at
12 least more possible than not. Rule 401. We have trouble
13 with that rule in this case. But under Rule 401, it is
14 more possible that it is at least possible that this
15 communication also had something to do with it.

16 So if we are going to accept evidence that
17 suggests that Amazon played some role in the creation of
18 the lines, then it is beyond inequitable to not take
19 evidence that perhaps the Union was also complicit in
20 that result. And I would add that everyone agreed to the
21 release schedule. So if this is evidence of nothing, the
22 release schedule is likewise evidence of nothing.

23 HEARING OFFICER DUNN: Okay. Obviously, Mr.
24 Lark, in the comments you just made, elicited the need
25 for both counsel to weigh in again. Mr. Milner, go

1 ahead.

2 MR. MILNER: Your Honor -- Well, first of
3 all, I thought you had already ruled on this.

4 HEARING OFFICER DUNN: I did.

5 MR. MILNER: Okay. But the flyer by the
6 Union is wholly different than Amazon's manager's
7 actions with respect to the release schedule. It's
8 apples and oranges. It's that simple.

9 HEARING OFFICER DUNN: Ms. Weis.

10 MS. FRIEDHEIM- WEIS: Thank you, madam.
11 Hearing Officer first, and I think it was mistaken. But
12 Mr. Larkin attributed some argument that I made
13 regarding the release schedule. I've said nothing about
14 the release schedule. So I will just reiterate that
15 offering this document, employers Exhibit 2921, as. It
16 pertains or allegedly pertains to Objection 6 and seven,
17 which is regarding the mechanics of how the Board
18 handled the election. The Union creating a flyer with
19 whatever information it contained and with whatever
20 information Amazon may have provided to employees is
21 irrelevant, period.

22 HEARING OFFICER DUNN: And I've made my
23 ruling. The ruling stands.

24 MR. LARKIN: So on that basis, we'd ask that
25 employers 2921 be placed in the rejected file.

1 HEARING OFFICER DUNN: That's granted.
2 (Employer's Exhibit 2921 received in rejected exhibit
3 file).

4 MR. LARKIN: We can take that down and put
5 up 2918.

6 MR. MILNER: I just want to point out again,
7 I want to make clear, Mr. Larkin, just put on the record
8 before that there seems to be a problem with Rule 401
9 being interpreted properly in this forum. I don't
10 believe there has been any such issue with the
11 interpretation of Rule 401. I don't believe that the
12 Hearing Officer should be undermined in that manner.

13 MR. LARKIN: Well, we disagree. The rules of
14 evidence are applicable so far as practical in Board
15 proceedings. Everyone who's ever practiced in Board
16 procedure knows that means that the rules are relaxed,
17 not tightened. And the vast majority of evidentiary
18 rulings that have denied Amazon the ability to introduce
19 evidence have been on grounds that, in our judgment,
20 represent a tightening of the federal rules of evidence.
21 Things that would be admissible in federal district
22 court have been deemed inadmissible here. I believe it's
23 inappropriate, and I'm noting my objection for the
24 record as I'm entitled to do.

25 HEARING OFFICER DUNN: Well, the record will

1 speak for itself.

2 BY MR. LARKIN:

3 Q. So with that, I put up 2918. And I would ask Mr.
4 Spence to verify that this was another flyer that he
5 produced to us. Page 2 has the same statement regarding
6 the polls. We would offer it for the same reason.

7 MR. MILNER: I object for the same reason.

8 HEARING OFFICER DUNN: Ms. Weis.

9 MS. FRIEDHEIM- WEIS: If it's meant to speak
10 toward objections six and seven, I object for the same
11 reasons that I've objected to previously.

12 HEARING OFFICER DUNN: And I will grant both
13 Petitioner and the RD rep a standing objection on those
14 bases that they stated with respect to 2921. I make the
15 same ruling with respect to 2918. It is rejected.

16 MR. LARKIN: Okay. Yes. Can we please have
17 -- we would ask the 2918 be placed in the rejected
18 exhibit file.

19 HEARING OFFICER DUNN: That's granted.

20 (Employer's Exhibit 2918 received in rejected exhibits
21 file)

22 BY MR. LARKIN:

23 Q. Mr. Spence, I'm going to ask you about a couple
24 of more of these. Can we do 2914, please? Mr. Spence,
25 I'll represent this is another flyer that you produced

1 to us last night. It's a two-page document, and I'll ask
2 you, do you recognize 2914?

3 A. Yes.

4 Q. And can you tell us what it is?

5 A. It is information that was given out to
6 associates informing them of Amazon's manufactured
7 arrests of Union organizers.

8 Q. Would offer 2914 in support of Objection 16.

9 MR. MILNER: Object to the relevance
10 objection 16 is that non-employee Petitioner organizers
11 repeatedly trespassed on the employer's property. I'm
12 not really sure how this flyer goes towards that
13 Objection.

14 HEARING OFFICER DUNN: Oh, sorry, Mr.
15 Larkin.

16 MR. LARKIN: I was going to say we've had a
17 variety of evidence throughout the hearing about the
18 Union's communications regarding that event that's been
19 admitted. Again, I'm asking Mr. Spence, in his capacity
20 as the custodian of the ALU's records about these
21 events, which we haven't done to this point.

22 MR. MILNER: It doesn't make the document
23 itself relevant to these objections.

24 HEARING OFFICER DUNN: Ms. Weis.

25 MS. FRIEDHEIM- WEIS: Again, we're talking

1 about Objection 16, which is not encompassed in one
2 through twelve. But in reading the objection, the
3 objection speaks to trespass, not about leafletting.

4 HEARING OFFICER DUNN: Mr. Larkin.

5 MR. LARKIN: I guess I'd like to make a
6 standing objection for the record to the Regional
7 Director representative offering objections to evidence
8 that does not go to the Board Objections. This has
9 happened throughout the hearing, and I'm not quite sure
10 why it continues, but I'll make a standing objection on
11 that basis.

12 MR. MILNER: I don't think there was an
13 objection made by her on that basis. She very
14 specifically before said she was objecting because it
15 was Objection 6 and eight, which go directly to the
16 region.

17 MS. FRIEDHEIM- WEIS: May I respond, madam
18 Hearing Officer.

19 HEARING OFFICER DUNN: Yes, you may, Ms.
20 Weis.

21 MS. FRIEDHEIM- WEIS: So of course, I have
22 directly responded and made objections and/or motions
23 regarding objections one through twelve, and only when
24 asked by you specifically to give an opinion. I am an
25 attorney, and so I have couched very carefully that

1 while it may not go toward objections one through
2 twelve, as an attorney, I give my legal opinion, I did
3 not make an official objection. I gave a legal opinion.
4 I am an attorney and I have a right to give a legal
5 opinion.

6 HEARING OFFICER DUNN: Right. When an
7 exhibit is offered, I ask if either the Petitioner or
8 the RD rep has an objection, and that is when you have
9 stated your opinion. So the record will reflect that. I
10 will receive 2914 and give it the weight that it
11 warrants.

12 (Employer's Exhibit 2914 received)

13 BY MR. LARKIN:

14 Q. Let's do 2917. And Mr. Spence, I'll represent
15 that this is a document you produced to us last night.
16 Do you recognize 2917?

17 A. Yeah. Is there another page to this?

18 Q. There is not another page.

19 A. Okay. Then yes.

20 Q. Can you tell us what it is?

21 A. So it's an informational flyer detailing which
22 unions and social movements have supported the ALU in
23 various ways through donations of resources or
24 expertise.

25 Q. We'd offer 2917 at this time.

1 MR. MILNER: Objection. Sorry.

2 HEARING OFFICER DUNN: I was cutting to the
3 chase. Before I asked you, Mr. Milner, what objection
4 are we offering 2917 for.

5 MR. LARKIN: 18.

6 MR. MILNER: Your Honor, either what is
7 stated here is true and then it is clearly relevant to
8 nothing, or it's a misrepresentation. And according to
9 case law from 1982 that has been in effect ever since, a
10 misrepresentation is not objectionable. So this document
11 is irrelevant.

12 MR. LARKIN: Well, the objection I think
13 pretty clearly states that the Union asserted at the end
14 of the campaign, that they were backed by more
15 established unions actively involved in the union's
16 campaign providing funding and other services. So I
17 think this flyer is directly relevant to that assertion.

18 HEARING OFFICER DUNN: Ms. Weis.

19 MS. FRIEDHEIM- WEIS: I have no objection.

20 HEARING OFFICER DUNN: Mr. Spence, can I ask
21 you a question about 2917. Do you know or have an
22 estimate regarding when this leaflet was handed out.

23 THE WITNESS: It was at some point during
24 the campaign period.

25 HEARING OFFICER DUNN: Okay. But you cannot

1 estimate what time period? During the critical period?

2 THE WITNESS: I mean, I would reject the
3 notion that it was an 11th hour communication. It was
4 something that -- it was messaging that was
5 communicated throughout the campaign period and before
6 and was formalized in the form of this flyer. The
7 contributions that these groups made, their
8 contributions from before the critical period and
9 during. So it was probably early on in the campaign
10 period that we formally started conveying this message.

11 HEARING OFFICER DUNN: All right. I'm going
12 to receive 2917.

13 (Employer's 2917 received)

14 MR. MILNER: Your Honor, I just want to
15 point out Make the Road New York is not a labor union,
16 and I don't know that the coalition of black trade
17 unionists is a Labor Union I'm not 100 percent sure.

18 MR. LARKIN: Those are facts that Mr. Milner
19 is free to explore with the witness when it's his turn.
20 You can take it down, Molly. 2916. Can we put that up?

21 BY MR. LARKIN:

22 Q. Mr. Spence, this one is a two-pager. I'll
23 represent, again, this is a document you produced to us
24 yesterday evening. You can see page 2 there. Do you
25 recognize exhibit 2916?

1 A. Yes.

2 Q. And can you tell us what it is?

3 A. Well, in response to the company's repeated
4 claims that the ALU was an organization with no
5 experience, we wanted to assure bargaining unit members
6 that despite the fact that the ALU was newly formed, we
7 had been receiving donations of advice and expertise and
8 other kinds of resources from established unions as an
9 act of solidarity.

10 Q. I'd offer 2916.

11 HEARING OFFICER DUNN: Mr. Milner.

12 MR. MILNER: Same objection as the last one.
13 It's not relevant to objection 18.

14 HEARING OFFICER DUNN: Ms. Weis.

15 MS. FRIEDHEIM- WEIS: No objection.

16 HEARING OFFICER DUNN: Same question for
17 you, Mr. Spence, that I had before regarding 2917. Any
18 idea of the time period in which 2916 was handed out?

19 THE WITNESS: Can we go back to the other
20 page? So eleven days before the opening of the polls.

21 HEARING OFFICER DUNN: Okay. All right, so I
22 will receive 2916. (Employer's Exhibit 2916 received).

23 BY MR. LARKIN:

24 Q. Is another two-pager, Mr. Spence that you
25 produced last night to us. So page 1 and then page 2.

1 And so, the question would for you is, do you recognize
2 2920?

3 A. Yes.

4 Q. And can you tell us what 2920 is?

5 A. Well, leading up to the campaign period and in
6 the early days of the campaign period, we had
7 communicated to workers that dues would be
8 democratically decided being that we are a newly formed
9 organization, there was no established dues rate.
10 However, the response that we received from workers is
11 that they would prefer a more concrete number to wrap
12 their head around. And so, the Workers Committee came
13 together and made a proposal that is subject to approval
14 after we have a contract of \$5 per week. And this is a
15 flyer that is communicating that to potential bargaining
16 unit members.

17 Q. And do you know when approximately the Union
18 would have been handing out 2920?

19 A. Quite early on in the campaign period, maybe late
20 January, early February.

21 Q. Okay. So I would offer 2920 in support of
22 Objection 14?

23 MR. MILNER: Mr. Milner?

24 MR. MILNER: I'm going to object. I don't
25 know how this is relevant to anything misleading or

1 being confusing. In fact, it says in big capital, bold
2 letters, pending voting approval and authorization of
3 all members.

4 HEARING OFFICER DUNN: Ms. Weis.

5 MS. FRIEDHEIM- WEIS: I don't see the
6 relevance, but I don't have an issue with the substance
7 of the flyer.

8 HEARING OFFICER DUNN: All right. I'm going
9 to receive 2920.

10 (Employer's Exhibit 2920 received)

11 BY MR. LARKIN:

12 Q. Okay. Let's see. Okay. That one was already
13 done. Okay. Can we do 491, please? Okay. Mr. Spence. So
14 now I've got up on the page, exhibit 491. It's a
15 two-page document. I believe you might have produced
16 this one to us. I'm not entirely certain. I think you
17 did. But my question to you is, nevertheless, do you
18 recognize Exhibit 491?

19 A. Yes.

20 Q. And can you tell us what that is?

21 A. An informational flyer, can we go to the next
22 page?

23 Q. Go ahead, Molly. To the next page.

24 A. An informational flyer that goes to when, after
25 winning the election, members could expect to start

1 paying dues. And we wanted to communicate that dues
2 payments would not start until after a contract had been
3 negotiated and the membership had voted to approve that
4 contract.

5 Q. And would it be fair to say that -- can you go
6 back to the first page, molly? It would be fair to say
7 that this is a fire that you handed out ten days prior
8 to the opening of the polls?

9 A. Yes.

10 Q. Okay, offer 491.

11 HEARING OFFICER DUNN: Mr. Milner.

12 MR. MILNER: Same objection.

13 HEARING OFFICER DUNN: Ms. Weis.

14 MS. FRIEDHEIM- WEIS: No objection.

15 HEARING OFFICER DUNN: I will receive 491.

16 (Employer's Exhibit 491 received)

17 MR. LARKIN: Would it be possible to take a
18 five minute lavatory break at this point?

19 HEARING OFFICER DUNN: Sure. Off the record.
20 Five minutes record.

21 (Off the record)

22 (On the record)

23 HEARING OFFICER DUNN: Let's please go back
24 on the record. And Mr. Spence, I remind you that you
25 remain under oath. Go ahead, Mr. Larkin.

1 BY MR. LARKIN:

2 Q. Okay. Mr. Spence, it's true that another manner
3 by which the ALU tried to communicate with bargaining
4 unit employees during the campaign was through social
5 media; is that correct?

6 A. Yes.

7 Q. The ALU had a Twitter account, is that right?

8 A. Yes.

9 Q. Who was responsible for posting content to the
10 Twitter -- ALU's Twitter account?

11 A. Primarily Brett Daniels, but also I have access,
12 and I would tweet from time to time.

13 Q. Okay. So I want to just show you a couple of
14 documents and ask you some questions about those. Let's
15 do -- can we do, Molly, 229? So I'm showing you, Mr.
16 Spence, a document that we've marked Employer's Exhibit
17 229. I'm focusing on the part up in the very top left of
18 the document where it says Amazon Labor Union retweeted.
19 Do you see that?

20 A. Yeah.

21 Q. Do you recognize Exhibit 229?

22 A. Yes.

23 Q. Can you tell us if this is a tweet from Mr.
24 Smalls that the ALU retweeted?

25 A. Yes.

1 Q. Did The ALU retweet this document on the 25th of
2 March 2022?

3 A. I'm not sure if it is from the original Tweet or
4 from the Retweet.

5 Q. Okay. So the retweet would have necessarily
6 occurred after the original Tweet?

7 A. Yeah.

8 Q. All right. So I would offer 229 at this time.

9 HEARING OFFICER DUNN: Mr. Milner.

10 MR. MILNER: You're offering the Tweet and
11 the video or I'm not sure what it is that you're --

12 MR. LARKIN: Just the tweet. I believe that
13 the video is already in evidence.

14 MR. MILNER: No objection.

15 HEARING OFFICER DUNN: Ms Weis?

16 MS. FRIEDHEIM-WEIS: No objection.

17 HEARING OFFICER DUNN: 229 is received.

18 (Employer's Exhibit 229 received)

19 BY MR. LARKIN:

20 Q. Okay. Mr. Spence, the ALU also had an Instagram
21 page; is that correct?

22 A. Yes.

23 Q. During the campaign period?

24 A. Yes.

25 Q. And who is responsible for posting content to the

1 ALU's Instagram page?

2 A. Daniels.

3 Q. All right. Can we do 386, please? Do you see
4 Employer's Exhibit 386, Mr. Spence?

5 A. Yes.

6 Q. And do you recognize it?

7 A. Not really.

8 Q. This is not something you've seen before?

9 A. I recognize that it appears to be a post made by
10 the Amazon Labor Union Instagram, but I don't know that
11 I've seen it before. I don't look at the Instagram that
12 often.

13 Q. You have any reason to doubt its authenticity?

14 A. No.

15 Q. And do you know what the photo is that is
16 depicted in the post?

17 A. Yes.

18 Q. Can you tell us what that is?

19 A. It's a light projection that occurred, I believe,
20 on March 23rd.

21 Q. All right. Offer 386.

22 HEARING OFFICER DUNN: Mr. Milner.

23 MR. MILNER: No objection.

24 HEARING OFFICER DUNN: Ms. Weis.

25 MS. FRIEDHEIM- WEIS: The witness said he

1 doesn't recognize it. He didn't see it before. But if
2 the Union doesn't have an objection, then the Rd rep
3 won't take a position.

4 HEARING OFFICER DUNN: All right, 386 is
5 received.

6 (Employer's Exhibit 386 received)

7 BY MR. LARKIN:

8 Q. I think I want to bring up 2923 Next, please. Mr.
9 Spence, you produced a few videos to us last night, and
10 I want to ask you about them. This -- I believe, 2923 is
11 a screenshot of a video that you produced last night,
12 and I'd like to play the video. Molly, do we have the
13 video? Okay. So this is 2923-V, which I'll just
14 represent is the video that you produced. 2923 was just
15 a screen grab of it for identification purposes. Can we
16 play this?

17 (Video playing).

18 Mr. Spence, do you recognize the video in
19 exhibit 2923-V.

20 A. Yes.

21 Q. And is that a video that you took?

22 A. Yes.

23 Q. And when did you do that?

24 A. I believe, like I said, it was 23rd. The night of
25 the 23rd.

1 Q. March 23rd, right, 2022?

2 A. Yes.

3 Q. And the flashing light up on the side of the
4 building, that was a projection of light, and that was
5 done by a group called the Illuminator, correct?

6 A. I believe so. I had no part in coordinating the
7 projection.

8 Q. Do you know who did?

9 A. That would be Chris Smalls.

10 Q. So you created the video in 2923-V. Are you aware
11 whether any other of the unions officers -- or well, let
12 me try to use the right term here individuals who hold
13 formal positions from the Union, are you aware whether
14 anyone else besides yourself who holds a formal position
15 with the Union took any other video or images of the
16 light projection?

17 MR. MILNER: I'm going to object both to the
18 use of the phrase "formal position with the Union" and
19 also to the relevance of the question.

20 HEARING OFFICER DUNN: Mr. Larkin, please
21 rephrase.

22 BY MR. LARKIN:

23 Q. Well, let's start with the officers. Any officers
24 of the ALU besides yourself, photo or video record the
25 light projections that we're looking at here in 2923-V?

1 MR. MILNER: I still object to the relevance.
2 I don't know what difference it makes if other people
3 took videos of the same thing that we already have in
4 evidence.

5 HEARING OFFICER DUNN: Mr. Larkin, I'm
6 inclined to agree.

7 MR. LARKIN: Well, if the answer is yes,
8 then it goes, number one, to subpoena compliance, but
9 number two, it would be probative to Objection 20 and
10 the existence of other relevant evidence.

11 HEARING OFFICER DUNN: Okay. I will allow
12 the witness to respond to the extent that he knows.

13 BY MR. LARKIN:

14 A. I don't know, but I will say that I took up the
15 task of making the recordings for posterity, so it was
16 likely that nobody else saw it necessary to make
17 recordings.

18 Q. Can we offer 2923 and 2923-V?

19 HEARING OFFICER DUNN: Mr. Milner?

20 MR. MILNER: Again, it just appears
21 cumulative at this point. I believe these pictures are
22 already in -- video is already in the record as another
23 exhibit. It's just more of the same thing literally.

24 HEARING OFFICER DUNN: Ms. Weis?

25 MS. FRIEDHEIM- WEIS: I believe it is in the

1 record under another Employer exhibit number, but I
2 don't have it handy, so I have no objection.

3 MR. MILNER: Again, I know Mr. Larking is
4 going to tell me it's an argument for the brief, but
5 it's also not a captive audience speech because it
6 wasn't and it wasn't within 24 hours of the election in
7 any event.

8 HEARING OFFICER DUNN: Mr. Larkin, do you
9 know if 2923-v is already in the record as a different
10 exhibit.

11 MR. LARKIN: Well, that's one of the things
12 I intend to ask Mr. Spence to try to confirm or not for
13 us.

14 HEARING OFFICER DUNN: Please, Mr. Spence,
15 to the extent you know.

16 THE WITNESS: Sorry, What is the question.

17 MR. LARKIN: Well, I would say that
18 regardless of the answer, I'm still going to offer
19 2923-V because I think it's sort of the original image
20 and it's relevant and probative. But let me just take it
21 down for a minute and Molly, let's put 388 up on the
22 screen, please. Okay.

23 BY MR. LARKIN:

24 Q. So Mr. Spence, 388 is a document that's already
25 been admitted. It is an instagram post from Brett

1 Daniels. It appears to depict the same event that you
2 recorded in 2923-V. The question that I have to you is
3 the photo that's in the image here in Employer 388, is
4 that an image that you gave to Mr. Daniels or is that an
5 image that's from something separate from what you
6 recorded that evening?

7 A. I'm going to be honest, I don't know because they
8 all look so similar. I don't know really, just by
9 looking at it, what's mine and what might be somebody
10 else's.

11 Q. Do you recall whether you provided Mr. Daniels
12 with a copy of the video that we just looked at that was
13 2923-V?

14 A. I don't recall.

15 Q. Okay. So we can take this one down. Okay, so I
16 would offer 2923 and 2923-V. On the basis of Mr.
17 Spence's answers.

18 HEARING OFFICER DUNN: All right. I will
19 receive both 2923 and 2923-V. As in Victor.
20 (Employer's Exhibits 2923 and 2923-V received)

21 MR. LARKIN: Okay. Can we do 2924, please.

22 MR. MILNER: This is clearly going to be
23 cumulative. I mean, we literally already went through in
24 the tab all of the messages that were put up on the
25 facade of the building. The length of time the messages

1 were displayed, how they rotated, where it came from. I
2 don't know what possible function is served by putting
3 pictures of the same messages on the same facade into
4 evidence all over again.

5 HEARING OFFICER DUNN: Mr. Larkin, it's
6 true. We already have this image of this message already
7 in the record.

8 MR. LARKIN: Well, this is just a screen
9 grab of another video that Mr. Spence produced that I'd
10 like him to authenticate.

11 HEARING OFFICER DUNN: Okay.

12 MR. MILNER: Your Honor, we don't need more
13 video of the same images being reflected on the facade.
14 What's the difference? There's already been extensive
15 testimony about this, and the testimony is that the same
16 messages were repeated over and over again. So unless
17 the Employer is planning to elicit testimony different
18 than that, I don't know where it is that we're going
19 here other than just cluttering the record and wasting
20 time.

21 HEARING OFFICER DUNN: I agree except that
22 Mr. Spence did testify that he took it upon himself to
23 make videos, and that based on that, others did not. And
24 so I'm going to allow Mr. Larkin to pursue it based on
25 that testimony.

1 MR. MILNER: I just would like a standing
2 objection then.

3 HEARING OFFICER DUNN: That is granted.

4 BY MR. LARKIN:

5 Q. Okay. So let's pull up 2924-V and let's just
6 play it.

7 (Video playing)

8 So Mr. Spence, do you recognize 2924-V?

9 A. Yeah. If you represent to me that that's a video
10 I submitted, then I trust you, Kurt, because they all
11 look the same.

12 Q. Well, I certainly appreciate that. It is a video
13 that you produced last night. So my question to you is,
14 do you recall recording that video?

15 A. Yeah. Well, I recall recording videos at the
16 time, and this is one of them.

17 Q. All right. I'd offer 2924-V.

18 HEARING OFFICER DUNN: Mr. Milner, Same
19 objection?

20 MR. MILNER: Yes.

21 HEARING OFFICER DUNN: Ms. Weis.

22 MS. FRIEDHEIM- WEIS: It's cumulative, but
23 if the witness can authenticate it, I don't have an
24 objection.

25 HEARING OFFICER DUNN: Yes, I'm going to

1 receive it based on the testimony of Mr. Spence about
2 videos.

3 (Employer's Exhibit 2924-V received)

4 BY MR. LARKIN:

5 Q. Okay. Just a couple more and we'll move on.
6 2925. And this is, again, a screen grab, Mr. Spence, of
7 a video that you produced to us last night. So that's
8 2925-V let's go ahead and just play it.

9 (Video playing).

10 Okay. Now, do you recognize 2925-V?

11 A. Yes.

12 Q. And is that another video that you created?

13 A. Yes.

14 Q. All right, I'd offer 2925 and 2925 -- V

15 HEARING OFFICER DUNN: Mr. Milner, Same
16 standing Objection?

17 MR. MILNER: Yes.

18 HEARING OFFICER DUNN: Ms. Weis?

19 MS. FRIEDHEIM- WEIS: No objection.

20 HEARING OFFICER DUNN: All right, 29 25 and
21 29 25 v. As in Victor are received.

22 (Employer's Exhibits 2925 and 2925-V received)

23 BY MR. LARKIN:

24 Q. Okay. And then one more, 2926. Okay. Mr. Spence,
25 this is one more video that you produced to us yesterday

1 evening. The screen grab -- 29 26 is the screen grab.
2 And 2926v is the video. So can we go ahead and play
3 that.

4 (Video playing).

5 And do you recognize 2926-V?

6 A. Yes.

7 Q. And is that another video that you created?

8 A. Yes.

9 Q. All right. So I would offer 2926 and 2926-V.

10 HEARING OFFICER DUNN: Mr. Milner, same
11 standing objection?

12 MR. MILNER: Yes, Your Honor.

13 HEARING OFFICER DUNN: All right, Ms. Weis.

14 MS. FRIEDHEIM- WEIS: I actually just have a
15 voir dire because I think I might have lost my train of
16 thought, if I may.

17 HEARING OFFICER DUNN: Yes, please.

18 MS. FRIEDHEIM- WEIS: Mr. Spence., As I
19 said, I might have lost my train of thought. These last
20 few videos that you were identifying, were these videos
21 that you posted on Instagram.

22 THE WITNESS: I don't post things to the
23 Instagram, so they might have been posted elsewhere and
24 then made their way to Instagram. That's all I know.

25 MS. FRIEDHEIM- WEIS: Do you know what you

1 did with these last two, three, four, five videos that
2 you were shown.

3 THE WITNESS: I think primarily they were
4 compiled to make a TikTok. So if they were posted to
5 TikTok, they might have made their way to Instagram or
6 Twitter or somewhere else.

7 MS. FRIEDHEIM- WEIS: None of this goes to
8 Objections one through twelve, but hearing what the
9 witness just said, I'm not really satisfied that there's
10 sufficient foundation for any of them, because I'm not
11 sure where they appeared, so I have that concern.

12 HEARING OFFICER DUNN: Okay, that's noted. I
13 will receive 29 26 and 29 26 v. As in Victor.
14 (Employer's Exhibits 2926 and 2926-V received)

15 BY MR. LARKIN:

16 Q. Mr. Spence did the ALU during the campaign period
17 have a TikTok account?

18 A. Yes.

19 Q. And who was responsible for posting content
20 during the campaign period to the TikTok account?

21 A. I was.

22 Q. Anybody else beside you?

23 A. So I had the credentials to log in. There were
24 people who were better at editing than I was, who helped
25 me put the TikToks together, but I had the final

1 approval over the content and what was inevitably
2 posted.

3 Q. Okay. So I want to ask you about a couple of
4 those. Can we do 385? 385 is a slip sheet for the video,
5 so let's pull that up.

6 (Video playing)

7 Do you recognize 385?

8 A. Yes.

9 Q. Actually, I think we've labeled it 385-V. Just to
10 be accurate. For the record, is that a TikTok that you
11 posted to the ALU's TikTok account?

12 A. Yes.

13 Q. And do you recall when you posted it?

14 A. I don't.

15 Q. It would have been some time after those events
16 were filmed, correct?

17 A. Yes. After the March 23rd projection, probably
18 shortly thereafter.

19 Q. I would move the admission of 385 at this time?

20 HEARING OFFICER DUNN: Mr. Milner, anything
21 beyond your standing objection.

22 MR. MILNER: Well, yeah, I mean, it's
23 cumulative. I mean, that is clearly just a rehash of the
24 other videos we law cut off and edited and put together.
25 So we're just now putting the evidence in for a third

1 time.

2 HEARING OFFICER DUNN: Ms. Weis.

3 MS. FRIEDHEIM- WEIS: I can't recall exactly
4 if it's the same video as Employer Exhibit 716. I
5 believe that was put in or attempted to be put in
6 through Brett Daniels. If it is, I would object that
7 it's just the same exhibit under a different number. If
8 not, I have no objection.

9 HEARING OFFICER DUNN: Mr. Larkin, do you
10 know, is it the same as 716?

11 MR. LARKIN: Let me just check on that.

12 HEARING OFFICER DUNN: Thanks.

13 MR. LARKIN: I don't believe it is. No.

14 HEARING OFFICER DUNN: Okay. I'm going to
15 receive 385 V, as in Victor, consistent with the Mr.
16 Spencer's testimony that the videos I received involving
17 the projection were used for the purpose of the TikTok.
18 (Employer's Exhibit 385-V received)

19 BY MR. LARKIN:

20 Q. You can take that off, Molly. And I want to do
21 something. I'm going to share my screen. So Mr. Spence,
22 I'm sharing my screen, and it should be, if I've done it
23 right --

24 HEARING OFFICER DUNN: A picture of a golf
25 course?

1 MR. LARKIN: No, it shouldn't be that. Let's
2 see. Oh, how about that? No? Yes?

3 HEARING OFFICER DUNN: -- exhibits I think.

4 MR. LARKIN: Yeah. What I'm trying to
5 display is the ALU's TikTok page as it currently lives
6 out on the internet.

7 BY MR. LARKIN:

8 Q. All right. Do you see that?

9 A. Yes.

10 Q. Okay. So I'm going to click on a TikTok post,
11 and I'm going to represent that It's the same thing that
12 we just saw on exhibit 385 V, and weDon'T need to watch
13 it. My only question to you, Mr. Spence, is whether
14 seeing the TikTok post that the video of which we've
15 entered in the record is 385 V. Does it refresh your
16 recollection as to when you posted it?

17 A. So I got to move the Zoom stuff out of the way.
18 Well, I can see that there's a date on there that says
19 March 24th.

20 Q. Does that sound accurate as far as when you would
21 have posted this video?

22 A. Yeah. Like I said, it was after the 23rd.
23 Shortly thereafter.

24 Q. Okay. And we should have made that part of the
25 screen grab, but for whatever reason, we did not. So I

1 just wanted to clarify that. All right. There are a few
2 more of those of these that I want to ask you about. I
3 just want to make sure that they're not already admitted
4 or rejected before I do. Yeah, I don't think they are.
5 So let's do 716. So for the rest of these, Mr. Spence,
6 the way I think we will have set this up is that there
7 will be a screen grab that actually shows the entire
8 TikTok post and then the video behind it. So I'm showing
9 you the screen grab of a TikTok post made to the ALU's
10 TikTok account on appears to be March 28th. And then
11 there's a video embedded. I'd like to play the video.
12 It's 716-V.

13 (Video playing)

14 So question first, Mr. Spence, do you
15 recognize 716 -- And you can take that off the screen.

16 A. Yeah.

17 Q. Is that a TikTok that you posted on March 28th of
18 2022?

19 A. Yes.

20 Q. Okay. And question that I have about it is the
21 video that is posted, did you make that video?

22 A. I was assisted with making it, but like I said,
23 the final authority of posting and determining what the
24 content of a video should be is mine.

25 Q. Okay. And what date were the various images in

1 the video filmed?

2 A. That I don't know. It seems to depict us giving
3 out food in the break room, which, as you know, we did
4 on many occasions. I don't know which one specifically.

5 Q. Okay. And also, in the video, it depicted, I
6 believe, on the table, the giving out of the ALU
7 lanyard. Did you see that?

8 A. Yeah.

9 Q. When did the Union begin to distribute those
10 During the campaign?

11 A. Possibly in late February through the end of the
12 campaign.

13 Q. Okay. So then the events in the video could have
14 been filmed anytime between late February and March
15 28th?

16 A. Yeah.

17 Q. Okay. I'd offer 716 at this time.

18 HEARING OFFICER DUNN: Mr. Milner.

19 MR. MILNER: I object to the relevance
20 unless I missed something in that video. As Mr. Spence
21 testified, it doesn't really show anything other than
22 workers taking food that it was provided to them for
23 free. Which is not an Objection and is not objectionable
24 contact under any interpretation of the law.

25 HEARING OFFICER DUNN: Ms. Weis.

1 MS. FRIEDHEIM- WEIS: Since Mr. Spence
2 either took or formulated the TikTok, I don't have an
3 issue with that. My issue would be to redact the faces
4 of non officers as they were engaging in Section 7
5 rights.

6 MR. MILNER: I was going to add that as
7 well, but thank you.

8 MS. FRIEDHEIM- WEIS: Or Section 7 activity,
9 I should say.

10 HEARING OFFICER DUNN: And Mr. Larkin, I just
11 have a question. I know we viewed that video, or at
12 least it looks awfully familiar to me. Are you sure that
13 is not an exhibit that has already been rejected.

14 MR. LARKIN: Yes and yes. We introduced this
15 video with Mr. Anthony, and he was unable to say who
16 created it, so I didn't offer it at that time.

17 HEARING OFFICER DUNN: I see. Okay. And then
18 I'm going to allow you to respond to the arguments made
19 by both Mr. Milner and Ms. Weis.

20 MR. LARKIN: Well, I would just say that
21 there are some images in the video that I believe are
22 relevant to agency status. I also believe that some of
23 the images in the video are relevant to Objection 10.
24 Anything further than that we'd have to excuse Mr.
25 Spence.

1 MR. MILNER: I am particularly curious how
2 the video could have anything to do with Objection 10.
3 Maybe we should excuse the witness.

4 HEARING OFFICER DUNN: Mr. Spence, if you
5 would leave the room. Thank you.

6 (Witness leaves videoconference)

7 And Mr. Milner, please confirm that he has.

8 MR. MILNER: Sure. Yep. Okay.

9 HEARING OFFICER DUNN: Mr. Larkin, you were
10 saying.

11 MR. LARKIN: Well, I mean, the video
12 corroborates the distribution of the ALU's vote Yes
13 Lanyard and that's all? I'm only offering it for that
14 purpose. There's been testimony about the presence of
15 lanyards in the voting area. And so, this video simply
16 corroborates the fact that they were distributed during
17 the campaign period.

18 MR. MILNER: No one has denied that the ALU
19 was distributed. Lanyards this is a non issue.

20 MR. LARKIN: I believe Ms. Maldonado denied
21 it yesterday.

22 HEARING OFFICER DUNN: Ms. Weis -- I'm
23 sorry, Mr. Milner. Go ahead.

24 MR. MILNER: I mean, the record will speak
25 for itself, but I do not believe Ms. Maldonado denied

1 the Union giving out lanyards during the campaign
2 period. I think she denied giving out lanyards during
3 the time frame of March 25 to March 30, which she
4 mistakenly referred to as the election period.

5 HEARING OFFICER DUNN: That is my
6 recollection of what Ms. Maldonado's testimony was. Ms.
7 Weis, go ahead.

8 MS. FRIEDHEIM- WEIS: Yeah. That's my
9 recollection of Ms. Maldonado's testimony as well. But
10 more importantly, up to now, I had had no issue with Mr.
11 Spence confirming that he made this TikTok, and I don't
12 think it was Mr. Anthony. It doesn't really matter. In
13 my notes, it was shown to Mr. Daniels, and since he
14 didn't take it, he couldn't confirm it, and Amazon moved
15 on. And up to now, I had no issue with it going in, for
16 whatever it's worth. But as to Objection 10, the fact
17 that ALU had lanyards on a table has nothing to do with
18 what the Board did or did not allow during the election.
19 The TikTok doesn't show the election, and it's
20 completely and wholly irrelevant to anything that
21 happened at the election.

22 HEARING OFFICER DUNN: Yes, I find that
23 Employer 716 is irrelevant to any of the Objections
24 before me, including Objection 10.

25 MR. LARKIN: All right, so we'd offer it

1 into the rejected exhibits file.

2 HEARING OFFICER DUNN: And that is granted.

3 (Employer's Exhibit 716 received)

4 MR. LARKIN: Before we bring Mr. Spence back,
5 I would proffer 719, which is another TikTok that I'd
6 ask him to authenticate. Can we pull that up, and then
7 can we play the video.

8 (Video playing)

9 MR. MILNER: My objections are the same to
10 this video.

11 HEARING OFFICER DUNN: Yes. And I think
12 that I would make the same ruling as I just made with
13 716 reject on the basis of relevance.

14 MR. LARKIN: Okay. I just wanted to confirm
15 something very quickly. Okay, so we would offer that 719
16 719 V into the rejected file.

17 HEARING OFFICER DUNN: That's granted.
18 (Employer's Exhibits 719 and 719-v received in rejected
19 exhibits file)

20 MR. LARKIN: Okay. And I think we can bring
21 him back.

22 MR. MILNER: Think he might be in the
23 restroom. Let me check.

24 HEARING OFFICER DUNN: Let's briefly go off
25 the record while Mr. Milner checks.

1 (Off the record

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